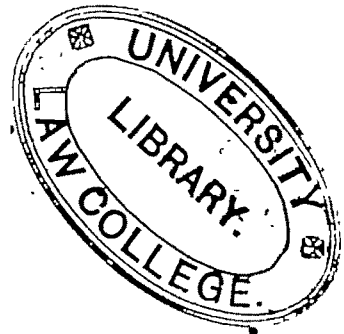


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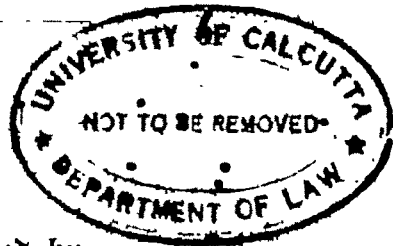
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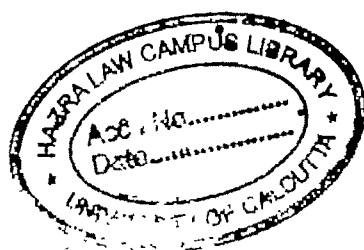
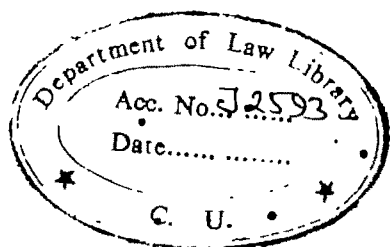
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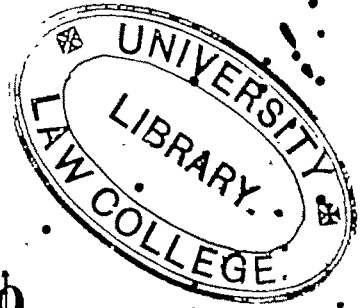
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SIR M. R. W.

WHEN from the Bench he left us, years ago,
Mid Bar-traditions of a life renowned
For fearless independence, seldom found,
Even among great advocates, that know
How best to use it when occasions grow :
For power of work unearthing law profound,
At midnight hours, in judgments which abound
In streams of cases, as they forward flow :
Methought that rest beneath a milder sky.
And wifely care might his lost strength restore,
And in the Queen's own Council, throned on high,
He would the riches of his mind unfold
In monumental judgments, as of old.—
But death soon dashed the dream for evermore.

F. R. V.

1893.

LAW ANTERIOR TO CONTRACT ACT.

DINSHAH FURDUNJI MULLA, M. A., LL. B.

ATTORNEY-AT-LAW, BOMBAY.

THE Charters of the eighteenth century which established Courts of Justice (1) for the three Presidency Towns of Calcutta, Madras and Bombay, introduced into India the English common and statute law in force at the time (2) so far as it was applicable to Indian circumstances (3). It is, however, a matter of controversy whether English law was so introduced by the Charter of 1726 (13 Geo. I) so as to extend to India the statutes passed up to that date only, or subsequently also by the Charters of 1753 and 1774 so as to embrace statutes up to 1774 (4).

The application of English Law to the natives of India led to many inconveniences (5). To obviate this, the statute of 1781 (21 Geo. III, c. 70, s. 17) empowered the Court of Calcutta (being then the Supreme Court), and the statute of 1797 (33 Geo. III, 142, s. 13) empowered the

(1) These were at first the Mayors' Courts, which in Calcutta was superseded by the Supreme Court in 1773, and finally by the High Court in 1862. The Mayors' Courts in Madras and Bombay were replaced in 1797 by the Recorders' Courts. The Recorders' Court in Madras was abolished in 1799 and that in Bombay in 1823, and a Supreme Court was established in its stead, which again was superseded by a High Court in both the places in 1862.

(2) Though this view of the introduction of English law into India was pronounced incorrect and unreasonable by the Indian Law Commissioners in their celebrated *Lex loci* Report of 31st October 1840, it may now be taken as an accepted doctrine. The Commissioners maintained that neither the Hindu nor Mahomedan law was the *Lex loci* of British India as it was so interwoven with religion as to be unfitted for persons professing a different faith; and they held that there being no *Lex loci* the English law became *ipso jure* the *Lex loci* when any part of British India became a possession of the British Crown, and binding upon all persons who did not belong to the Hindu and Mahomedan Community. They recommended the passing of an Act declaring a *Lex loci* for British India, founded on the English law, but the recommendation was never carried into effect. See in this connection *Naoraji v. Rogers*, (1866-67) 4 Bom. H. C., 1, 17-28; *The Indian Chief*, 3 Robinson Adm. Rep. p. 28.

(3) Thus it has been held that the statute of Mortmain, 9 Geo. II, c. 36 does not apply to India (*Mayor of Lyons v. East India Coy.* (1836) 1 M. I. A. 175); similarly the law as to forfeiture for suicide (*Gov. of Bengal v. Ramoo Surmooyo Doss* (1863), 9 M. I. A. 391); and the law as to maintenance and champerty (*Ram Coomarr v. Chander Canto Mookerjee*, (1876) L. R. 2 I. A., 28), do not apply to India, as that law is not applicable to Indian circumstances.

(4) This question has now only an historical interest derived from the trial and conviction of Nunoomar, under the English statute of 1728 (2 Geo. II, c. 25). According to the view that only the statutes up to 1726 were introduced into India, the conviction under the statute of 1728 would be illegal. It would however be legal according to the other view, and that view was maintained by Sir James Stephen in his "Nunoomar and Impey", Vol. II. See *Ilbert on the Government of India*, pp. 34-35.

(5) Cowell's *Tagore Law Lectures*, 3rd Ed. p. 55.

Courts in Madras and Bombay (being then the Recorders' Courts) to determine all actions and suits against the inhabitants of the said towns, provided that their succession and inheritance to lands, rents and goods, and all matters of contract and dealing between party and party, should be determined in the case of Mahomedans by the laws and usages of Mahomedans, and in the case of Gentoos (Hindus) by the laws and usages of Gentoos, and where only one of the parties should be a Mahomedan or Gentoos, by the laws and usages of the defendant (6). The effect of these statutes was to supersede English law so far as regards Hindus and Mahomedans in the case of contracts and other matters enumerated in the statutes, and to declare the right of Hindus and Mahomedans to their own laws and usages. The result was that in a suit on contract for instance, between Hindus, the Hindu law of contract was applied, and the Mahomedan law in the case of a contract between Mahomedans and this continued up to the enactment of the Indian Contract Act under the powers conferred upon the Indian Legislature by the Indian Councils Act of 1861 (24 & 25 Vic., c. 67).

The statute of 1871 applied to the Supreme Court at Calcutta, and the statute of 1797 applied to the Recorders' Courts in Madras and Bombay. Neither of these statutes is yet repealed, though the Courts to which they were applicable have been abolished. In 1862, High Courts were established for each of the Presidency Towns of Calcutta, Madras and Bombay, but the same personal law continued to be administered to Hindus and Mahomedans, and is administered to them even at the present day subject to legislative enactments. Turning to matters of contract, the Hindu law of contract was applied by the High Courts in the exercise of their original jurisdiction to Hindus, and the Mahomedan law to Mahomedans, up to the passing of the Contract Act in 1872. The question then arises—how was it that though the Courts to which the statutes of 1781 and 1797 were applicable were abolished, the provision in those statutes for applying Hindu law to Hindus and Mahomedan law to Mahomedans continued to have effect in the High Courts in the exercise of their original jurisdiction? It could not have been because of the non-repeal of the statutes, for their application was confined to certain Courts, and the abolition of those Courts rendered their provisions *ipso facto* nugatory. The explanation of this phenomenon is to be sought for in the Charters of the High Court, for it is by virtue of the Charters that the said provisions have been kept alive and applied by the High Courts.

(6). For similar Indian enactments, see foot-note (12) at p. 6 *post*.

Thus taking the case of the Calcutta High Court, the combined effect of the Letters Patent of 1862 (cl. 18) ⁽⁷⁾ and of the amended Letters Patent of 1865 (cl. 19) ⁽⁸⁾ was to render it incumbent upon the High Court to apply in the exercise of its Ordinary Original Civil Jurisdiction the same law or equity that would have been applied by the Supreme Court. Now the law or equity applied by the Supreme Court being under the statute of 1781 the Hindu law of Contract, &c. to Hindus and the Mahomedan law of contract to Mahomedans, the provision in that statute for applying the native law of contract to natives became incorporated by implication in the Charter of 1862 as well as 1865 and it was thus that that provision came to have effect in the High Court. This was, however, subject to the legislative powers of the Governor General in Council, as provided by the 44th clause of the Charter of 1865. The Indian legislature had, therefore, the power to alter by legislative enactment the provisions of cl. 19 of the Charter, and this is done, in the case of contracts, by the Indian Contract Act. The result, therefore, is that notwithstanding the provisions of clause 18 of the Charter of 1862 and clause 19 of the Charter of 1865, which direct the High Court to apply the same law or equity that would have been applied by the Supreme Court, namely the native law of contract to natives, the High Court has now to administer, in matters relating to contract, the law as laid down in the Indian Contract Act whether the parties to the suit be Hindus or Mahomedans ⁽¹⁰⁾. Stated in other words the 'law or equity' required to be ad-

(7) 'And It is our further will and pleasure, and we do hereby for us, our heirs and executors, grant, ordain and establish, that the said Supreme Court of Judicature at Fort William in Bengal, should also be a Court of Equity, and shall and may have full power and authority to administer justice in a summary manner, as nearly as may, according to the Rules and Proceedings of our High Court of Chancery in Great Britain, and upon an appeal filed, to issue subpoenas and other process, under the seal of the said Supreme Court of Judicature at Fort William in Bengal, to compel the appearance and answer upon oath of the parties therein complained against and obedience to the decrees and orders of the said Court of Equity in such manner and form and to such effect as our high Chancellor of Great Britain doth, or lawfully may, under our great seal of Great Britain.

(8) And we do further ordain that, with respect to the law or equity to be applied to each case coming before the said High Court of Judicature at Fort William in Bengal, in the exercise of its ordinary original ~~civil~~ jurisdiction, such law or equity shall be the law or equity which would have been applied by the said High Court to such case if these Letters Patent had not issued.

(9) And we do further ordain and declare that all the provisions of these Our Letters Patent are subject to the legislative powers of the Governor-General in Council, exercised at the meetings for the purpose of making laws and regulations, and also of the Governor General in cases of emergency under the provisions of an Act of the twentyfourth and twentyfifth years of our reign chapter sixty-seven and may be in all respects amended and altered thereby.

(10) See *Madhub Ghosh v. Rajcoomar*, (1874) 14 Beng. L. R., 78

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administered by the High Court under cl. 19 of the amended Letters Patent, is, in matters of contract, modified by the Indian Contract Act and other enactments relating to particular contracts. Subject, however, to any law made by the Governor General in Council the High Courts are still bound, in the exercise of their ordinary original civil jurisdiction, to apply the native law of contract to natives as comprised in the expression 'law or equity' in cl. 19.

As respects the High Courts of Madras and Bombay the statute of 1797 contained a provision similar to that contained in the statute of 1781 for applying Hindu law to Hindus and Mahomedan law to Mahomedans. The statute of 1797, however, applied to the Recorder's Courts in Madras and Bombay. Those Courts were superseded by a Supreme Court in Madras in 1799, and in Bombay in 1828. The Charter of the Supreme Court of Madras (cl. 23) and that for the Supreme Court of Bombay (cl. 18) contained similar provisions for the application of Hindu and Mahomedan law to those races. The law and equity administered by the Supreme Courts in Madras and Bombay thus consisted in the application of Hindu law to Hindus and Mahomedan law to Mahomedans, and the same law and equity is directed to be applied by the High Court in Madras and Bombay by virtue of their Charters to cases coming before those Courts in the exercise of their ordinary original civil jurisdiction. It may be stated that the Charters of those High Courts are almost the same as the Charters of the Calcutta High Court.

The old Bengal Regulation III of 1773 (s. 21) directed the Judges in the Zilla and City Courts, in cases where no specific rule existed, to act according to justice, equity and good conscience. Similar provisions occurred in the Madras Regulation II of 1802, section 17. Both these Regulations are now repealed, but the direction to act, in the absence of any specific rule according to justice, equity and good conscience still retains its place in the Bengal Civil Courts Act XII of 1887, section 37, and in the Madras Civil Courts Act III of 1873, s. 16.

As to the Courts in the Mofussil of Bombay the Bombay Regulation IV of 1827 (s. 26), which is still in force, provides that the law to be observed in the trial of suits shall be Acts of Parliament and Regulations of Government applicable to the case; in the absence of such Acts and Regulations, the usage of the Country in which the suit arose; if none such appears, the law of the defendant, and in the absence of specific law, usage, equity and good conscience.

The expression 'justice, equity and good conscience' has been inter-

preted to mean the rules of English Law so far as they are applicable to Indian society and circumstances (11). This expression also occurs in Indian Acts relating to Civil Courts in other parts of British India (12).

The Contract Act does not profess to be a complete Code dealing with the law relating to contracts. As appears from the preamble, the Act purports to do no more than define and amend certain parts of that law. No doubt it treats of particular contracts in separate chapters, but there is nothing to show that the legislature intended to deal with any particular chapter or sub-division of the law relating to contracts (13).

The second clause of s. 1 of the Indian Contract Act says, in the most general terms, that the Act is to extend to the whole of British India. These words are large enough to include all Courts and persons of all denominations. The third clause of s. 1 provides that nothing contained in the Act shall affect the provisions of any statute not thereby expressly repealed. The schedule to the Act enumerates the enactments repealed by the Act, but the provision in the statute of 1781 directing Hindu Law to be applied to Hindus and Mahomedan law to Mahomedans does not find place in that schedule.

This circumstance gave rise to a question in *Madhab Chunder v. Rajoomar Doss*, (14) as to the applicability of the Contract Act to Hindus in cases coming before the High Court in the exercise of its ordinary original civil jurisdiction. The parties to the suit were Hindus, and the case came before the High Court of Calcutta in the exercise of its ordinary original civil jurisdiction. On behalf of the plaintiff it was contended that the Contract Act did not apply to Hindus in cases before the High Court in the exercise of that jurisdiction, and that the case was governed as provided by s. 17 of the statute of 1781, by the Hindu law of Contract which, it was alleged, did not render an agreement in restraint of trade void as was done by s. 27 of the Act. It was, however, held that the Act did apply to Hindus having regard to the general words used in cl. 2 of the section; as respects the non-repeal of the statute of 1781 it was said that it was not necessary to repeal it, as the Supreme Court to which it applied having been abolished it had ceased to have operation as an Act.

(11). *Waghelg v. Shakk Masudin*, (1887) L. R., 14 L. A., 89, 96; s. c. 11 Bom. 551, 561, *Dada v. Babaji*, (1895) 2 Bom. H. C., 36, 38; *Woble v. Lester* (1885) 2 Bom. H. C., 52, 56.

(12). Act XII of 1887, s. 37 (Bengal), North Western Provinces and Assam; Act IV of 1872 s. 5, as amended by Act XII of 1878 (Punjab), Act XXII of 1875, ss. 5-6 (Central Provinces), Act XVIII of 1876 s. 3 (Oudh), and Act XI of 1889, s. 4 (Lower Burma).

(13) *Irrawadi Flotilla Co. v. Bugwandas*, (1891) 18 Cal. 620-31.

(14) (1874) 14 Beng. L. R., 76

In this connection may be noted the following observations of Sir Courtney Ilbert in his Government of India (p. 391): "These provisions of the Act of 1781, and the corresponding provisions of the Act of 1797 relating to the Recorders' Courts of Madras and Bombay (afterwards superseded by the Supreme Courts, and now by the High Courts), are still in force, but are not included in the list of English statutory provisions which, under the Indian Councils Act of 1861 (24 & 25 Vict. c. 67), Indian legislatures are precluded from altering. Consequently they are alterable, and have in fact been materially affected, by Indian legislation. For instance, the native law of contract has been almost entirely superseded by the Contract Act of 1872 and other Acts."

It will be observed from what has been stated in the foregoing paragraphs, that it is incorrect to say that the provisions of those statutes are still in force. Nor is it correct to say that those provisions have been altered by Indian legislation in matters of contract by the Indian Contract Act, because they were alterable under the Indian Councils Act. The statutes ceased to have any operation on the abolition of the Courts to which they applied, and if their provisions directing the application of the native law of contract to natives were followed by the High Courts before the enactment of the Contract Act, it was by virtue of the Charters of the High Courts which incorporated by implication the provisions of those statutes. The provisions of the Charters were by the very terms of those Charters made subject to legislative alteration, and it is in this wise that the alteration was brought about in the law of contract.

As stated above, the Contract Act does not cover the whole field of contract law. In cases, therefore, not provided for by the Contract Act or other legislative enactments relating to particular contracts, it is incumbent upon the High Courts, in the exercise of their original jurisdiction to apply the Hindu law of contract to Hindus and the Mahomedan law of contract to Mahomedans. This is because of the provisions of the Charters of those Courts noted at p. ante. As an instance of the above proposition may be mentioned the rule of the Hindu law of contract known as *damdupat* according to which interest exceeding the amount of the principal cannot be recovered at any one time. This rule is still in force in the Bombay Presidency (15) and in the Presidency Town of Calcut-

(15) *Dhondu v. Narayan*, (1863) 1 Bom. H. C. 47; *Kharakchand v. Ebrahim*, (1866) 3 Bom. H. C. 23; *Nathubhai v. Mulchand*, (1868) 5 Bom. H. C. A.C., 196; *Hakim Manji v. Mamas Ayab*, (1870) 7 Bom. H.C., O.C., 19; *Bhauanga v. Govind* (1873) 10 Bom. H. C., 382; *Ramchandra v. Bhikarao*, (1877) 1 Bom. 577; *Ganpat v. Adarji* (1877) 3 Bom. 312; *Davood Doreesh v.*

ts (16) but it is not recognised outside that town (17) or in the Madras Presidency (18). But such cases are very few and the native law of contract may, for all practical purposes, be regarded as having been superseded by the Contract Act and other enactments relating to particular contracts.

CONFLICT OF LAWS BETWEEN CONVERTS AND NON-CONVERTS IN INDIA

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1. *Introductory Remarks.*
2. *Act XXI of 1850.*
3. *Inheritance.*

4. *Marriages*
5. *Natural Guardianship*
6. *Adoption.*

CHAPTER I.

INTRODUCTORY REMARKS.

IT is rather an unfortunate thing that some of our old Acts should continue to stand on our Statute Book with all the vagueness characteristic of those days when legislatures, while they found definition itself an indefinite art, could not anticipate the far-reaching effects of their unavoidably general words upon the heterogeneous conditions of heterogeneous races whose habits were not then known and far less studied. As they however do so continue to form part of our living law one would expect Judges to resort more frequently to the liberal and larger principles of interpretation than is usually considered sufficient for the purposes of the more careful and accurate provisions of modern Acts. Judicial interpretation gives rise to judge-made law, and the duty of Judges must differ according to circumstances when they are applying old and vague Acts to a modern state of things and when they are finding out the plain meaning of recent enactments presumed to have with accuracy all present circumstances in contemplation. Judges applying the latter kind of law have only to interpret it, while they have really to make new law altogether when they have to grope into the inside of the body of the former to find out its spirit, or, if we may call it so, the seat of its unknown soul.

• *Fallahadas* (1894) 18 Bom. 227; *Gopal v. Gangaram*, (1896) 20 Bom. 721, overruling *Shri Ganes v. Keshavras*, (1891) 15 Bom. 625; *Hiralal v. Nagar*, (1897) 21 Bom. 38; *Ahsahel v. Shalji*, (1897) 21 Bom. 85.

(16) *Nobin Chunder v. Romesh Chunder* (1887) 14 Cal. 731.

(17) *Hot Narain v. Ram Dein*, (1882) 9 Cal. 781; 12 C. L. R. 590.

(18) *Amaji Row v. Baghubai*, (1883) 6 Mad. 400.

These remarks are suggested by the way in which Act XXI of 1850 has been interpreted at different times. One Court called upon to interpret it in one new case applies what it thinks to be a common sense principle. Another Court gets rid of its own difficulty in another and divergent case by applying the principle of this principle instead of the principle of the Act itself. Chances of truth are diminished and not increased by such multiplications of its fractions, and the method of applying to circumstance X a principle not deducible from the Act itself but from another principle applied to circumstance Y has the disadvantage of removing from the mind of the judge in the latter case the direct spirit or principle of the Act. When judges follow past decisions in this fashion in interpreting in 1900 an Act passed in 1850 and containing as much as one section in addition to its preamble without looking at the Act itself, it cannot look otherwise than comical if it turns out at times that they have relied upon the principle of a decision which itself was wrong. The learned Judges who decided that under the Act in question a Hindu convert to Mahomedanism could give his Hindu son in adoption (1) seem very approximately to have erred in this manner. They have not only followed a wrong decision but have even aggravated its error. Had they considered the Act itself *de novo* by the light of their original talents which undoubtedly are high, they would probably have decided differently.

This can be shown more conveniently and usefully by considering the Act itself and then the different cases which have been included in or excluded from its scope by different Courts. With humbler powers and certainly less authority we shall consider the whole subject, not only of the effect of the Act in question but of the whole law on the subject on this contribution instead of confining ourselves to particular rulings or particular Acts.

CHAPTER II.

ACT XXI OF 1850

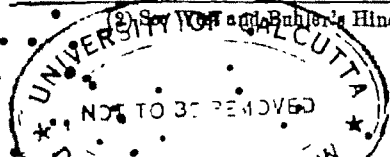
SECTION 1, the only section enacted by this Act, orders that (1) so much of any law or usage (2) as inflicts on any person forfeiture of (a) rights or (b) property, or (3) may be held in any way to impair or affect any right of inheritance, (4) by reason of (a) renunciation of or exclusion from any religion or of (b) deprivation of caste, (5) shall cease to be enforced as law. Out of these five factors of

(1) *Shamsing v. Santabal*, I. L. R. 25, Bom. 552; 3 Bom., L. R., 89.

this provision the second and third afford direct points for interpretation, while the plain language of the fifth is incomplete so far as it does not indicate affirmatively what law is to regulate the rights of converts and out-castes in place of the displaced law. Thus, if a Hindu becomes a Christian, his right to succeed to his father's inheritance is preserved by this Act. That is a right recognised by the laws of all nations, and this Act annuls the deprivation of that right by Hindu Law. But the laws of nations differ on details as to the exact extent of the son's right, and whether a Hindu convert to Christianity will share his father's immoveable estate upon the principles of Hindu Law as if he were a Hindu still, or whether his rights will be regulated by the personal law of Christians, is a question which this Act leaves quite open. The old statutory provision that the defendant's law will govern the case, hardly settles the difficulty; for whether it is the convert or his non-convert brother that has to be the defendant must always depend upon circumstances. We cannot assume that it was intended to judge the convert by the Hindu law if he was ousted by his Hindu relations from possession so as to be compelled to sue, but by the Christian law if he managed to remain in possession and compelled the latter to sue him (*). No light is thrown upon this point either by the said provision or by the Act in question. The Courts seem to have only assumed that the personal law of the convert prior to his conversion must continue to govern his rights even after conversion, whether he be plaintiff or defendant. But there has been no direct issue and no direct ruling on the point, nor anything to show his duties and obligation as opposed to his rights. The Act says nothing about the law of his duties.

It will be convenient to inquire into the questions that must arise in connection with the second and third factors of the enactment at this stage, though their solution must be postponed to that of the first factor. The former of the two annuls any such law as inflicts forfeiture of rights or property. The other factor does not allow any law to impair or affect any right of inheritance. Converts and outcastes are thus protected against three things, *viz.*, (1) forfeiture of rights, (2) forfeiture of property, and (3) any impairing or affecting their rights of inheritance. As rights of inheritance are included in the general term *rights*, its special mention may be taken to have in view the difference between "forfeiture" on the one hand and "impairing or affecting" on the other. A convert's right of inheritance cannot even be *impaired* or *affected* by his conversion, while his *other* rights may be impaired or affected by it but they cannot be wholly *forfeited*. There thus seems to be a difference between the case of inheri-

(*) See *Yam and Buhler's Hindu Law*, pp. 5 & 6 on this subject.

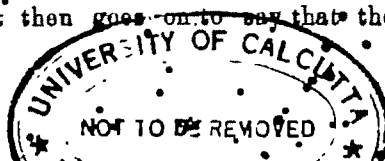
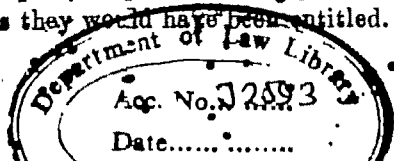


tance rights and other rights. One's rights of inheritance will remain intact without diminution or enlargement even after his conversion, and so far one can understand, though not without difficulty, how it comes on the point the Courts have always applied the personal law of birth to converts whether they were plaintiffs or defendants in suits between them and their co-heirs of the original persuasion. But as regards other rights, the Act only says they will not be forfeited without adding that they will not be affected. Considering the large meaning of the general term *rights* one can see why the law of the original persuasion of a convert should have been so impliedly allowed to impair and affect them as distinguished from their wholesale forfeiture.

But what are these so called *rights* that may be so impaired and affected but not forfeited? The word cannot mean rights in the largest or even the usual sense, for "property" and "rights of inheritance" (which are always included in the word "rights" as defined by jurists or used in ordinary sense) are both here separated and added as if they were some different commodity than the word "rights" which precedes both of them and forms a *third* class of things as it were.

Maxwell's advice is that we might find a key to the meaning of a section in the preamble of Acts unless that meaning be so clear and unambiguous that as embodied in the operative part of the statute it must be taken to be the real word of the legislator in preference to the recitals of the preamble. That of course is sound advice and is always accepted. The word "rights" in the section in question does present a clear ambiguity and we must go to the preamble for help. The same authority has also pointed out in another part of his work that the word "rights" has often been limited by the associated words, at times to vested rights, at times to private rights as distinguished from those enjoyed by individuals as members of the general public, and at times in other ways. The word is in fact to be understood and limited by the light of associated words. We have then to consider the word in this Act by the joint light of the preamble as well as of the associated words. It will be more convenient to first consider who are protected in respect of these rights and then to consider the rights in respect of which they are protected.

The preamble begins with reciting the provision of a Bengal Regulation which lays down that in suits between parties of different religious persuasions when one of them was a Hindu and the other a Mahomedan, the laws of those two religions "shall not be permitted to operate to deprive such party or parties of any property to which but for the operation of such laws they would have been entitled." It then goes on to say that the



object of the present Act is "to extend the principle" of the Bengal enactment "throughout the East India Company's territories." This object seems to have been attained (1) by including people of all religious persuasions in addition to Hindus and Mahomedans and (2) by enlarging the geographical limits of the law as will be seen from the words of the only section following the preamble.

But the preamble does not contemplate or propose any qualitative as distinguished from the above quantitative extension of the principle of the Bengal Act. One might justly presume therefore that any further modification of the wording of the Bengal Act in the Indian Act must have for its object better perspicuity and accuracy of language than that of the former Act and *not an addition to, or substantial modification of, the quality of its principle.* The word "rights" in the Indian Act being ambiguous as pointed out and capable of several constructions, it would seem reasonable to attach to it a meaning consistent and co-extensive with the Bengal principle.

The difficulty was raised in one of our previous paras as to the personal law to be applied to cases where parties are of different persuasions the renunciation of one of which is ordained by the Indian Act to be unaffected by the provisions of the renounced religion depriving the renouncer of his rights. The renounced religion had given the renouncer a positive status involving both rights and liabilities and, we may assume, it divested him of both upon his renunciation. Under the Bengal Regulation the renouncer shall not be deprived of *such of his rights as he would have enjoyed but for the operation* of the personal law applicable before that renunciation. This seems to suggest, not simply that under the Bengal Act the renouncer is made immune against the penalty for renunciation and yet permitted to enjoy the rights allowed him by the renounced religion, but that if he is made immune against the penalty the personal law of his birth is left untouched so far as by this renunciation of religion he is divested of the rights and privileges with which he had been clothed by *that law.* The Regulation preserves only such of the rights of the renouncer as he would have enjoyed "but for the operation" of the law of the renounced religion. The words are, not "but for the operation on the point of penalty for renunciation only", but, "*but for its operation*" without any qualifying expression. The man is to be allowed full enjoyment of such of his rights as he would have enjoyed if that law had never had any operation at all, i.e., if that law had never existed for him, had neither given him rights nor imposed obligations and penalties upon him. But for the operation of that law he would not have enjoyed the rights

peculiar to that law, and if that law deprives him of rights other than these, that deprivation is to have no legal force under the Regulation. The words protect only that "property to which but for the operation of that law he would have been entitled". Coparcenary rights, for instance, are not rights to which he would have been entitled "but for the operation of the Hindu law"; therefore, property consisting of these rights is not within the wording of the enactment, and its implied or express deprivation by the Hindu law would not be affected by the regulation. On the other hand the interest of the convert coparcener as a joint owner in the coparcenary property would be preserved by the enactment, for the joint ownership already vested in him is not the peculiar creation of Hindu law but is an interest recognized by all laws whatever the theory of the Hindu law as to the origin and special devolution of it. When a right is thus recognized by all laws, it becomes a creation of what, in paraphrased language, is called that "justice, equity, and good conscience" which the earliest statute as to the duties of Indian Judges direct them to administer where the laws of the Gentooes, or Hindus and Mahomedans, cannot be applied. The effect of a Hindu coparcener's conversion would, under this enactment, be to convert his coparcenary estate from the peculiar joint tenancy meant by Hindu law into that tenancy-in-common which is familiar to all systems of jurisprudence and must be given effect to by "justice, equity, and good conscience" as known all over the world. This view would have to be taken whether the convert is a plaintiff or defendant.

Such being the meaning of the particular provision of the Bengal enactment quoted with inverted commas by the preamble of Act XXI of 1850 with the undoubted object of showing the "principle" intended to be extended by it to all races in all British territories, very strong and clear reasons would be required to authorize our Courts to preserve to converts the benefits of the renounced laws without making them amenable to the duties, obligations, and penalties forming the co-relatives of those benefits which must stand or fall with them. You cannot thus mutilate a whole system of a particular personal law in general terms without creating confusion, injustice, and mischief. We cannot lightly presume that our legislature would prescribe such mutilation without clearly expressing itself to that effect. The Bengal enactment fairly appears to have steered clear of this mischief by transferring converts bodily, so to say, from the province of their renounced personal laws into the hands of justice, equity, and good conscience. There is nothing in

Act XXI of 1850, to show that it intended to diverge in this respect from the principle of the enactment which it wants faithfully to follow. When it says that "so much of the laws &c." which visit converts and outcastes with penalties, "shall cease to be enforced as law," there is no reason for supposing it to imply that the rest of such laws shall *not* cease to be enforced. It evidently left the vacuum caused by its reticence as regards such supplemental portion of such laws to be filled up by "justice, equity, and good conscience" according to circumstances on the lines of the previous enactment selected for its model. As regards the slight change of wording made by it, it can be sufficiently accounted for by its addition of outcastes as another object of its protection, the earlier enactment referring to converts only. Outcastes are not necessarily converts but may retain their religion without retaining their caste. These people might require to have their personal laws applied to them *mutatis mutandis* according to the dictates of justice, equity, and good conscience; and if the Act of 1850, unlike its model, omits to prohibit the enforcement of such laws, an adequate explanation for such omission is thus afforded by its inclusion of outcastes within the scope of its protection. That is a far different thing from giving even converts all the benefits of the laws of the renounced religion without binding them hand and foot to bear the burdens imposed by those laws. And yet most of the decisions under the Act seem to assume that it enables or binds them to give the converts such an anomalous and unjust position. The point does not seem to have been raised or decided, but it would be worth the while of those learned in the law to raise it as being a sound one whenever there is opportunity for it.

As for ourselves, having arrived at the conclusion that Act XXI of 1850 proposes to extend the *principle* of the Bengal enactment quantitatively and *not* qualitatively except so far as may be necessary to meet the demands of justice, equity, and good conscience, and having ascertained what that principle is, we are now in a position to consider whether the operative part of this Act is open to a construction consistent with the principle mentioned by its preamble, or whether the wording of that part really enlarges the qualitative scope of that principle by preserving to converts and outcastes more "rights" than those included in the word "property" in the Bengal Regulation. Of the two lights open to us in the matter according to Maxwell, we have found that one, *viz.*, the preamble, is not in favour of such enlargement. It now remains for us to consider the meaning of the word "rights" by the light of associated words.

Rights other than those of property are personal rights—rights which

are attached to the person of a man whether by his personal law or even by the general law, *jura personarum* as distinguished from *jura rerum*. These rights are not necessarily dissociated from property, for there are several rights which may be personal and yet may refer to property. A Hindu's right to worship at a public Hindu temple is a personal right and yet it is a right over the temple property. Such rights may be classed separately as rights under personal law in respect of property. It does not seem that any body has ever urged, or that any Court would ever decide, that such rights are protected by the Act in spite of the fact that they are rights in a sense and are also rights in property. And why is this not so? In the first instance these rights do not constitute the "property" preserved by the Bengal Regulation; and, secondly, the rights belong to a Hindu as a Hindu and so long only as the Hindu law does not deprive him of them. The Act thus does not propose to protect rights which are the special creations of Hindu law and must cease to have any operation as soon as the Hindu ceases to be a Hindu and the disappearance of the reason for applying the Hindu law to him makes the details of that law inoperative as a consequence whether the details refer to person or to property.

On the other hand, there are rights connected with property or person which are given by both general law as well as by personal law conjointly or by one of them only. When the general law thus alone or conjointly gives property to a man, the Act as well as its model clearly prevent one's personal law from depriving him of such property. But the wording of the Bengal enactment protected only "property" of this kind and left incorporeal rights, such as a right of easement, a right to redeem &c., to be included in the word property by inference only, for such rights are scarcely called "property" in usual parlance (1). The Act of 1850 uses a wording which is enough to cure this defect when it nullifies the forfeiture of rights or property by our personal law. It proposes thus to supply a more accurate wording than its model had done. It saves in fact such rights in properties as are usually fractions of full "property" or "dominium" and are not understood to form a part of its meaning. To construe the Act to mean to protect these "rights" and this property is to make it improve upon the looser wording of the model. To confine the expression "rights" to these fractional rights only is to make the principle of the Act identical with that of the model. To extend it to rights in respect of persons, such as arise by guardianship or marriage, is to enlarge the scope of the preamble beyond anything

(1) Compare the use of *Jura* as opposed to Property: Austin's Jurisprudence Vol. II p. 923, Ed. 3rd.

hinted at by it, simply because the operative part of the Act is capable of two constructions one of which is co-extensive with the preamble and the other is wider than the preamble.

As regards rights of an incorporeal nature created only by particular personal laws in respect of property, instances may be found of them in a Hindu's right to live with the family in the family house, to partition the property, and to claim devolution by survivorship as distinguished from succession as heir. Under the meaning we have placed upon the words of the Act, there would be some scope for judge-made law in such cases in deciding which of these rights are so peculiar to Hindu law as not to admit being included in the general law and which of them either possess the common features of both with deviations in points of details or contain such intricacies of admixture of the exclusive features of the two as to require careful separation and distinct recognition of the separate elements. But once this result is reached, the judges have only to carry out the principle of the Act by denying to converts what is found on separation or without it to belong to the personal law and by preserving or even adding everything that would come within his rights under general law or become due under it as a matter of equity, justice, and conscience. A Hindu renouncing his religion would thus be deprived of the benefits of his survivorship after his conversion and would equally be able to resist the claims of his old coparceners to diminish his share on account of new births in the family, and his widow would be entitled to resist the claims which the surviving coparceners may set up on the ground of survivorship. The convert's right to partition would be protected by the Act, but he could only have a partition without any of the incidents of Hindu law whether in his favour or against him. He would certainly not have any right to joint living as a member of any joint family. His conversion converts him from a Hindu coparcener into a mere co-sharer under the general law. Upon the same principle he would be denied all rights of a personal character whether by marriage or guardianship or the like unless at least the person over whom he claims such rights has also been simultaneously converted. This would be so whether we look to the presumption generally underlying all personal law that a party belongs to ~~its~~ persuasion and can claim only as such, or whether we look at the meaning of the word "rights" in the Act as being co-extensive with that of its model and excluding all personal rights not connected with property. Whether there are any personal rights in respect of persons which are not the special creatures of personal religions and laws is an exceedingly doubtful matter. The relations of father and

son, guardian and ward, husband and wife have for their starting point relations existing at birth and marriage, and of these two the former invariably depends upon the latter, as without legal marriage, there can be no legitimacy: marriage in fact is the keystone to every system of personal law and in its turn depends in every case upon the sufficiency or otherwise of religious ceremonies and covenants under the religion of the parties. It is difficult to see any point of personal law (except points of the law of slavery) not eventually resolving itself into one of religion, and it cannot be presumed that any Act like that under discussion would venture to disturb the balance of domestic and social rights even where the religion forming their basis is renounced, such rights being everywhere specially under theegis of one's personal law.

We are now in a position to understand the association of the words of the Act. Why rights of inheritance have been given a special mention has been already accounted for by the fact that the protection given in respect of these rights is larger than that in respect of the comprehensive terms "rights or property" in which they are included and in whose case only a wholesale forfeiture is nullified. The substitution of "rights or property" in place of "property" only of the older Act with the addition of an express intention in the preamble that the principle in both is one and the same, would indicate that the association of "rights" with "property" must be construed by reference to the maxim which asks us to interpret such general words as not including things of a class different from those which are associated with such words. The association of "rights" with "property," with the light thrown by the preamble, can only entitle us to understand the former as meaning other things of the same kind or class—*ejusdem generis*—with the latter and to exclude personal rights as foreign to that class or kind.

Our attempt at the interpretation of this short and simple Act has been elaborate, but the necessity for so making it has arisen from the course of decisions in respect of it. The soundness or otherwise of these decisions we shall now be able to analyze and criticise with some clearness.

[To be continued.]

GLEANNING.

The object of punishment and the treatment of Criminals.

IN Canada, as well as in Great Britain, there is a steadily increasing recognition of the sound doctrine that reformatory treatment of

criminals ought to be substituted for retributive punishment and that the primary object of punishment is the protection of society. There are a number, however, who yet believe that the main purpose of criminal legislation is to punish offenders against the law rather than to protect the community. The changes of view on this question have been various and remarkable.

It is only within the last hundred years that any serious effort was made by legislators to study and understand the cause of crime. The system of trial and punishment prior to the nineteenth century was barbarous, and brutalizing. The mental condition of the offender was very little regarded and his opportunity for defending himself against a charge was very slight. Perhaps however it would not be accurate to describe the legislators of the eighteenth century as deliberately cruel in maintaining such laws.

At that time the criminal population was an unexplored social strata. The legislators seemed impressed with the belief that the criminal would be certain to remain a criminal until he died, and that therefore the sooner that event was accomplished the better for the community. There were nearly two hundred cases of crime punishable by death. If the hanging of the accused did not cure him of his inclination to steal, or to commit similar offences, it at least prevented him from repeating the offence. As criminals in their actions, to use the phrase of the old indictments, were "moved by the instigation of the devil," the law was ready to send them to their instigator without undue delay. Instead of punishment being inflicted in the spirit of patient duty, the feeling of vengeance seemed to be the dominant influence in dealing with criminals at that time. The criminal had injured society and therefore society was entitled to wreak prompt and effective vengeance upon him.

Subsequently an arrangement became popular by which many criminals in England were given away as slaves to Western planters instead of being kept for the dungeon or scaffold. This was considered a merciful innovation, or at all events it answered Portia's description of the quality of mercy—it was twice blessed; it blessed him that gave and him that took. England was relieved of an ugly burden and the slave-driver had a new victim without cost. Later on this system had to be abandoned and many criminals were then sent to Australia until such a course could no longer be followed. The next step was incarceration in the foul prisons, the earthly hells in the heart of society, which prevailed until Howard's time.

Gradually, however, the impression had grown in the community that all the people outside the gaols were of kinship with the unfortunate offen-

ders against the law, and that it might be desirable to study the question of their treatment from a humane standpoint. Naturally, those who advocated this view were for a long time a minority, but as "history is the record of the triumphs of minorities" the changes made by the law in the treatment of criminals since that time down to to-day have been characterized by a steady, if slow, humanizing of the criminal law in all its deviations.

The mental or physical condition of the offender was given no consideration by our fierce forefathers, and a trace of the old ferocious spirit which sent diseased, insane and irresponsible persons to the dungeon may still be found in the inhuman system which lingers in some of our cities and municipalities of punishing the chronic inebriate by sending him to a prison where there is no attempt to cure the disease of inebriety.—O.L.J.

RECENT ENGLISH CASES.

ACTION, cause of—Inducing employer to break contract—Justification for interference—Prior contract inconsistent with that of employer. The plaintiff, who was a workman, entered into a contract by which he was apprenticed to his employers to learn certain work. A friendly society of workmen engaged in similar work protested to the employers against the engagement of the plaintiff as an apprentice, on the ground that it was a breach one of the rules of the society which the employers had agreed to and signed, and they gave notice that, if the engagement was continued, they would call out the workmen who were working for the employers, and who were all members of the society. In consequence of this threat the employers refused to continue to teach the plaintiff under the terms of the deed of apprenticeship. In an action by him against the society and certain of the officers:—*Held*, that the plaintiff had a good cause of action, to which the previous agreement between the society and the employers was no answer. *Read v. Friendly Society of Operative Stonemasons of England, Ireland and Wales* (1902, 2 K. B., 732).

CHARITY—Bequest "for the charitable purposes agreed upon between" the testatrix and the legates—Evidence—Admissibility—Will—Construction—Charitable legacy—Limited charitable purpose. A testatrix bequeathed £4,000, to O. "for the charitable purposes agreed upon between us":—*Held*, that this was a gift for limited charitable purposes, and that evidence was admissible to show what the purposes agreed upon were. *In re Huxtable: Huxtable v. Crawford* (1902, 2 Ch., 798).

CONTRACT—Assignability—Contract to supply goods to company—Liquidation of company—Assignment of contract—Right of contracting company and of assignee. The owner of land contracted with a company to supply them for fifty years with at least 750 tons of chalk per week, and so much more as they might require for their manufacture of cement upon their land, the chalk to be delivered in convenient daily quantities as required by the company by written notice given on the preceding day. The company, which had a small capital and was doing a comparatively small business, went into voluntary liquidation and transferred all its business and property, and purported to assign this contract to a second company, which had an extensive business, carried on at various places, and a large capital:—*Held*, that though the second company could not maintain an action on the contract in their own right as assignees of the company with whom the contract was made, the contract was a subsisting one between the original parties to it, and had not been put an end to by the liquidation of the original company or the assignment to the second company, or by both those facts taken together. *Tolhurst v. The Associated Portland Cement Manufacturers* (1902, 2 K. B., 680).

INSURANCE, MARINE—General average—Sacrifice made on outward voyage of ship in ballast—Liability of chartered freight to contribute. A ship was chartered to proceed to a foreign port, there load a cargo and bring it home, the chartered freight being payable on delivery of the cargo. While the ship was proceeding in ballast to her port of loading she grounded, and a general average sacrifice was made. She subsequently continued her voyage, loaded her cargo, delivered it, and received the freight:—*Held*, that the chartered freight was liable to contribute to the general average sacrifice. *Steamship Christbrook Company v. London and Provincial Marine and General Insurance Company* (1902, 2 Ch., 681).

PARTNERSHIP—Articles of partnership—Power for any partner to nominate successor—Nomination—Acceptance by nominee—Consent or refusal by continuing partners—Rights of nominee—Specific Performances—Equitable relief. Where, in partnership articles, it has been agreed between the partners that any one of them shall be at liberty to nominate and introduce any other person into the partnership, and a valid nomination is made by one partner accordingly, followed by acceptance of the nomination by the nominee, the other partners are bound to give effect to the nomination, and, in case of their refusal to admit the nominee as partner or to do and execute the acts and deeds necessary for conferring upon him the rights of a partner, he is entitled, as against them, to such relief as Courts of Equity are in the habit of granting to persons standing in the relation of

partners, subject to his fulfilling, on his part, such conditions of his admission as may be contained in the articles, such as executing a proper deed, or otherwise. *Byrne v. Reid* (1902, 2 Ch., 735).

POWER OF APPOINTMENT—*General testamentary power—Exercise—Covenant to exercise power by way of security for loan—Liability of appointed fund for debts.* The donee of a general testamentary power of appointment over a fund borrowed a sum of money and, as security for the loan, covenanted with the lender that he would make a will appointing that the loan should be a first charge on the fund, and that he would not revoke the will. He made a will accordingly, and died. *Held*, that the covenant was ineffectual to bind the fund, and that, notwithstanding that the will was made in pursuance of the covenant, the lender was a volunteer as against the testator's general creditors, and therefore took subject to the rule that the exercise by will of a general power of appointment makes the property which is the subject of the power assets for the payment of the debts of the appointor; consequently, that he was not entitled to priority as regards the fund over the other creditors. *In re Layley. Zaiser v. Layley* (1902, 2 Ch., 799).

WILL—*Uncertainty—Gift for life with direction to dispose of estate according to verbally expressed wishes—Parol evidence—Admissibility—Avoidance of gift for uncertainty—Construction of will.* Testator by his will appointed his wife sole executrix, and gave her his property of life. He then desired and empowered her by her will or in her lifetime to dispose of his estate "in accordance with my wishes verbally expressed by me to her":—*Held*, that parol evidence could not be admitted to shew what the testator's verbally expressed wishes were, and that the power for disposition given to the widow was void for uncertainty. *In re Helley. Helley v. Helley* (1902, 2 Ch., 866).

REVIEWS.

A History of English Legal Institutions. By A. T. CARTER, M. A., D. C. L., of the Inner Temple, Barrister-at-Law: one of the Readers to the Inns of Court. LONDON: Butterworth and Co., 12 Bell Yard, Temple Bar. 1902. Demi 8 vo. Pages 302. Price 14 s.

THE jurisprudence of England differs radically, in one respect, from the jurisprudence of the rest of Europe. The latter is grounded more or less upon Roman jurisprudence while the former takes its origin in certain primeval institutions quite independent of Roman influence, though at some stages of its developement it has largely been inspired by, if not actu-

ally borrowed from, the jurisprudence of Rome. This splendid isolation of English jurisprudence opens out an inviting field of legal science. The development of a system of law is dependent upon the institutions which call it into existence and bring it into play: the history of legal institutions is, thus, rendered as necessary as the history of the law itself. The learned author, therefore, deserves to be congratulated upon having directed his attention to this important, and hitherto untrodden, field of legal literature. He has graphically delineated institutions that in the process of time died out completely: and such others which, in a greater or less degree, supplied the origin and lent form and substance to the magnificent institutions of our own times. We have, on the whole, found the contents of this work interesting and attractive: and a perusal of it has led us to the belief that no study of English law, or of any system of law based upon the same, can be complete without a study of the history of the English Legal Institutions.

A Guide to Criminal Law. By CHARLES THWAITES, Solicitor. LONDON: Geo. Barber, Fumival street, Holborn. Sixth Edition. 1902. Demi 8 vo. Pages xi and 192. Price 10 s.

THE purpose of this publication is to supply a guide to the student who has to study the Criminal Law of England. Its general plan is, firstly, to advise him on the books he should read; secondly, to give him a general sketch of the elementary principles of Criminal Law and Procedure; and thirdly to provide a series of questions by which he may test himself. The learned author, as a successful teacher of law, has turned to account the experience he has gained by producing an analysis of the Criminal law, which presents all the important points in their proper sequence and which is as valuable in acquiring an elementary knowledge of the law as for revising his impressions for examination purposes after a student has waded through his text-books on the subject. The Criminal Law of England is prescribed as a subject of study by some of the Indian Universities: to their students we can very confidently commend this little book. Its printing and general get up deserve praise.

Bankers' Advances on Mercantile Securities other than Bills of Exchange and Promissory Notes. By ARTHUR REGINALD BUTTERWORTH, of the Inner Temple, Barrister-at-Law. LONDON: Sweet and Maxwell, Limited, 3 Chancery Lane, W. C.: E. Ingham Wilson, 11 Royal Exchange, E. C. 1902. Demi 8 vo. Pages xv and 208. Price 7s. 6d.

THE title of this book furnishes, in some measure, a key to its contents. It contains much information not hitherto collected in a single

volume. The author has elucidated some points of considerable difficulty upon which insufficient light seems to have been thrown by recognized text-books—such as the important consequences of the distinction between delivery orders and warrants generally and in relation to bankruptcy; of that between estoppel and a cause of action; and the effect of certain decisions of the House of Lords relating to banker's advances to stock brokers and money dealers. The book is meant for the use of lawyers as well as laymen. In order that it may be useful to the former the author has throughout mentioned in the footnotes the authorities which bear out the propositions embodied in the text, whereas to maintain its usefulness to the latter it is written in a style singularly free from legal technical expressions. We make no doubt that it will be extremely useful to all who are interested in advances made on mercantile securities other than bills of exchange and promissory notes and will be indispensable to bankers and stock brokers as well as to lawyers.

The Indian Easements Act (V of 1882). By DESAI NAROTAM, Pleader, Bombay High Court. BOMBAY: The Tatva-vivechaka Press, Khetwadi Main Road, 1903. Boy. 8 vo. Pages lviii and 140. Price 3-8-0.

NEXT in importance to the law of Property stands the law of Easements. It constituted, at one time, only a portion of the law of Property: subsequently, owing to the importance it had gathered round it, necessity was felt of treating it as an independent branch of law. The Romans had their servitudes, which in England found a counterpart in prescriptions. In India, both the Hindu and Mahomedan laws recognized rights closely resembling easements: yet, in cases coming before the British Indian Courts, the English law of prescriptions used to be applied almost in its entirety. In course of time, however, necessity was felt to codify the law on the subject, which was then "for the most part to be found only in treatises and reports practically inaccessible to a large proportion of the legal profession in the Mufassal and to the Subordinate Judges." In 1882, therefore, the Indian Easements Act was ushered into existence. It is based with a few deviations on the law of England, which "being just, equitable, and almost free from local peculiarities had, in many cases, been held to regulate the subject in India." The book in our hands is a commentary on this Act. It gives a lucid introduction which briefly surveys the provisions of the Act and institutes a comparison between the two systems of law where they happen to differ. The commentary on the Act is bristling with decided cases, English and Indian.

which are brought quite upto date. The cases are arranged in well-marked groups. For instance, comments under s. 15 begin with a consideration of easements, their origin, enjoyment and interruption: they are then subdivided under the headings of light and air, support, water and ways; and are concluded by a discussion of the nature of prescription at common law. The learned compiler has, we find, discharged his self-imposed task very creditably: and we feel convinced that the book will rapidly find favour with the profession.

The Acts of the Governor General of India in Council for the year 1902. By DESAI NAROTAM, Pleader, Bombay High Court. BOMBAY: The Tatva-vivechaka Press, Khetwadi Main Road. 1903. Roy. 8vo. Pages 70. Price Rs. 2.

ACTS enacted by the Legislative Council of the Governor-General of India, during 1902, are collected in this book. It contains Statements of Objects and Reasons, Reports of the Select Committees and extracts from the Proceedings of the Legislative Council; and has also the qualification of being well-printed.

The Acts of the Governor of Bombay in Council for the year 1902. By DESAI NAROTAM, Pleader, Bombay High Court. 1903. Roy. 8vo. Pages 68. Price annas 8.

THIS publication reproduces the Acts enacted by the Legislative Council of the Governor of Bombay during the year 1902, and places them within an easy reach of the public.

MISCELLANY.

A VERY wealthy lady, named Silva, died recently in Lisbon, and left her entire property to a cook. The lady in question was a fervid spiritualist and a firm believer in the theory of the transmigration of souls. She imagined that the soul of her dead husband had entered the body of the rooster, and therefore she caused a special fowl-house to be built for the bird, and ordered the servants to pay particular attention to the "master's" wants. The disgust of the relatives when the old lady's will was disclosed can be imagined, and a law suit would have followed—with the rooster as defendant, presumably, on the ground of "undue influence," or something of the sort—had not one of the heirs adopted the simple expedient of having the wealthy fowl killed, and thus becoming the next in succession.

Bombay Law Reporter.

February, 1903.

CONFLICT OF LAWS BETWEEN CONVERTS AND NON-CONVERTS IN INDIA.

GOVERDHANRAM MADHAVRAM TRIPATHI, B. A., LL. B.

VAKIL, HIGH COURT.

[Continued from p. 17].

CHAPTER III.

INHERITANCE.

THE simplest cases might seem to be those on inheritance, but even these have left their difficulties. In the well-known Tagore case the convert was the only son of the testator who had disinherited him and substituted not simply an heir but a line of heirs by his will. The disinherison is reported to have failed on account of Act XXI of 1850. In reality the greater part of the will failed on account of its illegal provisions attempting to create a line of heirs &c., and the question was whether the convert could claim to treat so much of the will as inoperative and to stand upon his rights so far as an intestacy was thus created by the operation of law. The will, never having looked to this contingency, could not, overrule his claims *dehors* the will. There is no provision or ruling saying that a man may not be disinherited by will on account of his conversion being at the root of the testator's motive as on any other account. Motives may be useful in construing wills but not in setting them aside. All that this ruling may be taken to have decided is that no rule of Hindu Law could operate to disinherit the man after this Act. That being the case, he was the sole heir to the father's intestate property under equity, justice, and good conscience, for he was his *only* son and neither because the defendants were Hindus nor because the Hindu law became applicable by the Act itself. On this last point the decision says

nothing one way or the other but silently awards the plaintiff's claim as the legitimate result of the other contentions raised and decided.

That the law of inheritance like every other branch of personal law follows one's religion and changes with change of religion, is a proposition too often repeated by our Courts including the Privy Council to require the citation of authorities. But even here distinctions are made. Rights which have come into existence prior to the moment of conversion and become vested in others cannot be injuriously affected by it but must be governed by the law applicable to the original persuasion. But property acquired by the convert subsequently to the conversion will devolve according to the law of his new faith." Both these propositions have been cited by Mr. Mayne on the authority of 2 W. Mac N. 181, 132 and 10 M. I. A. 511, 537. Justice and equity would seem similarly to demand that property acquired by others than the convert subsequently to the moment of conversion should also devolve according to the personal law applicable to them and not to him so far as a deviation from that course of devolution would affect them and their non-convert relative injuriously, while Act XXI of 1850 demands that he too should not be injuriously affected by non-deviation from that course, i. e., by the application of the punitive provisions of the renounced personal law. He is pretty much in the position of people to whom no particular personal law can be applied without some inconvenience or injustice to some body, himself or others. Some such difficulty was experienced in adjudging the status of the Hindu sons of different Hindu mothers by an English father in *Myna Boyes v. Ootaram*, 8 Moore I. A. 400. The sons lived by agreement as an undivided Hindu family and possessed joint property as such. Their ancestral property could not be "ancestral" in the sense of the Hindu Law which would look upon their father as not legally a father and does not recognize property inherited from mother as "ancestral". Their union as Hindus could at the most be looked upon as making their property "joint" by consent. Their inherited property was looked upon as "inherited from collaterals" and held as "joint property" of partners by consent. It was held that on the death of each such son, his lineal heirs, representing their parent, would by the effect of the original agreement between such sons, enter into the partnership begun by the parent and succeed by its force. Collaterals were however decided to be not entitled to so enter by succession, unless the Hindu law gave, in the case under consideration, a right of inheritance also to collaterals. It was added that the law of survivorship which is a consequence of such a partnership among Hindus, would come in only on failure of heirs. This addition seems to have been an *obiter dictum*. The rest

is a clear refusal to include those who though Hindus themselves, were not Hindu sons of a Hindu father, within the scope of its co-parcenary law in spite of the agreement of the parties. This was done on what may be called first principles. There hardly seems reason to follow other principles in cases under the Act of 1850, and so that Act cannot be held to allow to converts from Hindutism rights to succeed to collaterals upon the strength of the renounced Hindu law unless some general principle of equity, justice, and good conscience applicable without the help of Hindu law recognise a right so to succeed. Here is a good scope for judge-made law until some new legislation relieves Judges of their problems in the direction. It is enough for the present to point out that in such cases the application of the law of the original persuasion of converts can only be looked upon as an erroneous, unjust, and mischievous way of solving the difficulty and is not within the contemplation of the Act.

The confusion created in our case law by overlooking this aspect of the question is capable of being illustrated by comparing the following cases:

(a) In a case where a question of inheritance to a convert from Hinduism to Christianity was raised, the Madras Court once held that the wife of the convert could not succeed to his estate, because by Hindu Law restitution of conjugal rights could not be granted between the parties, because their marriage was practically dissolved by the conversion, and because the right of inheritance to the husband like any other connection with him was extinct: *Sinammal v. The Administrator General of Madras*, I. L. R. 8 Mad. 169.

(b) At another stage of the case in respect of the same convert, the marriage was held to have subsisted in spite of the conversion and in spite of a farikhat passed between the husband and wife, and the law of inheritance applicable to the case was held to be that laid down by the Succession Act on the ground that s. 331 of this Act exempts the property of Hindus from being governed by the Act but does not prohibit Hindus from succeeding under the Act: *Administrator General of Madras v. Anandachari*, I. L. R. 9 Madras 466.

(c) On the other hand upon a question as to the divesting of an estate vested in a Hindu widow before her conversion, it was held to be protected by Act XXI of 1850: 3 W. R. 206.

A convert, according to these cases, may succeed under the law of his original persuasion, but succession to himself is not to be governed by that law. This result may not be inconsistent with the language of the Act of 1850, but it seems certainly inconsistent with equity, justice and good conscience that what is good for the goose should not equally be so for the gander.

er. Of the three views above compared, it is only possible to accept the conclusion of I. L. R. 8 Mad. 169 as being the one capable of being applied to all cases consistently and therefore entitled to be considered the law of equity, justice and good conscience, if we can improve upon the language of its *ratio decidendi*. Whether the past marriage of a deceased person with a living one were extinct or not, whether their relationship as husband and wife or father and son be continued or not, by the law of the original persuasion of the convert, that law ceases to apply to the convert equally in the matter of succession to him or by him and becomes entirely irrelevant and foreign to such matters as a matter of "equity, justice, and good conscience" which alone take the place of all personal laws where parties have no such law in common. The statutory provision for judging parties by the personal law of the defendant assumes that the plaintiff's right to sue had its foundation in the fact that the personal laws of the parties are not only divergent but that they have been so and have continued to be so ever since the genesis of that right. That provision was, as already noted, never meant for cases where parties at the date of such genesis belonged to the same persuasion and one of them had chosen to change it at a subsequent date.* When, therefore, a person gives up his persuasion, the right to succession, whether to him or by him, must be judged in the same scales, and the law of his original persuasion becomes inapplicable equally in both cases for the simple reason that the extinction of the persuasion as a fact must logically be followed by the extinction of the law which that persuasion alone had called into being. Any other course can only be justified by indulging in the fiction that the superstructure of a personal law does logically survive the extinction of its causal persuasion in the minds of any of the parties or even of legislators. There is nothing in the Acts to encourage the maintenance of such a fiction, and the case in 8 Madras is a crude but definite expression of the renunciation of this fiction. The persuasion gone, its law must go without distinctions. Act XXI of 1850 contains nothing, not only to help the fiction in question, but even to divert the ordinary course of such ordinary logic, while, as pointed out, the model of its preamble can only be understood to be clearly opposed to the application of renounced personal laws to the renouncers.

The decision in I. L. R. 9 Mad. 466 certainly pointed out the right thing that marriage under Hindu law was not dissolved in the ordinary sense by the conversion of one of the parties. There is no dissolution of marriage in any event under that law. But the Court in that case failed to see that the judge who decided I. L. R. 8 Mad. 169 would have stated his

* See West and Buhler pp. 5 and 6.

conclusion more accurately if he had said that a Hindu wife could not, under Hindu law, find any provision in it to enable her to succeed to her convert husband's estate which, by his act, he the husband had taken away from its control. The texts from Hindu law cited by that Judge against the Hindu wife's right of inheritance are not really texts against her rights but against the right of the convert husband to succeed to the Hindu wife. They were cited in all probability if the citers had any meaning in their citing, to show that by a principle of reciprocity a Hindu wife whose estate could not under her personal law pass to her convert husband as her heir, could not claim the converse right of heirship to his estate. The Judge described this state of things by wrongly saying that the marriage was thus dissolved instead of by saying that the right of such wife and husband to inherit to each other as such was one that under the Hindu law had no existence. Had he expressed himself in this latter and more accurate way, he would have put to himself the question which naturally arises out of this situation—"What law is to apply to them, if they continue husband and wife and yet can find no help from Hindu Law?"

The judges in I. L. R. 9 Mad. 466 did raise this question though they had no occasion to answer more than a part of it. They decided that the Indian Succession Act was to govern the case as to the wife's claim to succeed to her convert husband's estate, but had no occasion to decide what law would have governed the husband's claim if the wife had predeceased him. Their decision, so far as it applied s. 331 of the Succession Act to the estate left by the convert husband, was no doubt fully within the wording of that Act, but it is not equally clear that it is in accordance with its spirit. S. 42 of this Act lays down that the rights of widows and widowers to succeed to their consorts are the same and s. 16 makes the wife's domicile follow that of her husband and excepts from the rule cases where one of the parties is transported or where both are living separate by judicial decision. Where a suit for restitution of conjugal rights is refused on the ground of the wife's or husband's conversion to another faith, they would practically be living separate under the sanction of a judicial decision. If a Hindu wife so situated lived in a native State, the law of her domicile would not include either Act XXI of 1850 or Act X of 1865. If her husband have his domicile in British India, his wife would succeed to his estate under sections 26 and 331 of the Succession Act as interpreted by the Madras Court and yet by reason of the law of her domicile he would not succeed to her. There would thus be no reciprocity of rights between the two people such as

s. 43 of the Succession Act (1) lays down. If therefore s. 43 is to have its own operation side by side with s. 331, the Succession Act ought not to be applied to claims by Hindu or Mahomedan wives to inherit the estates of their Christian husbands. This seems to be the spirit of the Act by which alone, and not by the wording of section 331, standing by itself, that section must be interpreted. I. L. R. 9 Mad. 466 would thus appear to have laid down a wrong rule. Even section 41 accentuates the principle of reciprocity in another direction and lends support to the construction of sections 26, 27, 41 and 331 being subject to the reciprocal equality of husband and wife as laid down in section 43 with which all these sections must be read.

The principle of reciprocity which the judge who decided I. L. R. 8 Mad. 169 had innately in mind but which the Court in I. L. R. 9 Mad. 466 lost sight of, may be taken to have been accepted by the Succession Act as a principle of equity, justice, and good conscience. We cannot lightly presume that section 331 was intended to make an exception to this principle, as the latter of these cases virtually suggests, simply because it lays down a negative rule saying that inheritance to Hindus &c. is outside the scope of the Act. There is nothing in it to show that its list of those outside such scope is exhaustive. A Hindu wife's right to maintenance and, under certain circumstances, to claim it even as a charge upon her Hindu husband's property, ought not to be recognised as it comes within the terms of s. 4 of this Act and does not come within the terms of s. 331, and yet it has not occurred to any one to disallow this right on the ground that it is not covered by s. 331. A Hindu wife's right to inherit her convert husband's property, as coming within the terms of s. 2 and not of s. 331, would be governed by ss. 26 and 27 and must therefore be governed by the Succession Act in spite of her being a Hindu, if 9 Mad. 466 is correct; and yet when it is the convert that claims to succeed to her Stridhana, we must, if the Hindu law is to be applied, go through the questions of their marriage being in approved or disapproved form and perchance allow nothing to the widower in spite of s. 43, because s. 331 applies to the case. Surely, such results cannot be contemplated by s. 2 which defines those who come within the Act, and which must be taken to have no operation not only where both parties are of the persuasions mentioned in s. 331 but even where a conflict of personal laws arises by reason of their belonging to different persuasions. The Succession Act, whatever the meaning of its individual

(1) The section runs thus:—"The husband surviving his wife has the same rights in respect of her property, if she die intestate, as the widow has in respect of her husband's property if he die intestate."

sections, was as a whole intended for those cases of successions where all the parties concerned belong to a common persuasion and yet have no personal law by reason of that persuasion and not where either there is a common persuasion and common personal law or where the parties belong to persuasions which are not common to all of them. The result of applying it in these latter two cases would be confusion and sacrifice of general principles of equity, justice, and good conscience, and either the Act must be so interpreted as to avoid these results or legislature must cure the defect. The words of s. 2 direct that its law of inheritance shall be the law for all in India except those for whom other provision is made by that Act or by other laws in force in India, the words being "except where otherwise provided for by this Act or by any other law for the time being in force." The belief of judges seems to have been that this "any other law" must be some "Act"; there is nothing to show that subsisting personal laws, in force by reason of the statute which is the fountain source of the authority of Hindu and Mahomedan laws, are not as much "laws" for the purposes of this section as any enacted Act. There is nothing in the Succession Act s. 331 to show that it gave any rights to a Hindu or a Mahomedan to succeed to a Mlechchha or a Kafir such as a man on conversion would be under these two systems respectively. There is also nothing in Act XXI of 1850 or its model to suggest that new Mlechchhas and Kafirs are intended to spite their relatives of their original persuasions by claiming the benefit of the renounced laws while exempted from reciprocating in the matters of their own liabilities except within the limits of the Succession Act. It is needless to multiply hypothetical cases or discursive matter to prove the point that neither of the two Acts could have been intended to force the principles of any specific personal law including that contained in the Succession Act itself upon parties having no such law in common.

While this amount of erroneous interpretation has crept into our case-law, it is not possible to question the soundness of those decisions which interpret Act XXI of 1850 as abrogating the divesting of vested rights by reason of conversion even where these rights had originated in the operation of personal laws since renounced. Such a case was 3 W. R. 206, where a Hindu widow was allowed to retain her inheritance in spite of her conversion. The Act in question had two clear objects in view. In the first instance it proposed to annul so much of personal laws as punished converts by divesting them of vested interests. Secondly, it annulled so much of them as punished converts by depriving them of all rights irrespective of justice, equity, and good conscience as if the converts had

ceased to be human beings. But it did not go the further length of *renouncing* their conversion with any continuance of any rights under the laws of the persuasions deliberately renounced. The confusion of case law has been so much that this aspect of the matter cannot be too much insisted upon as supplying a safe test of the meaning of the Act.

While the application of the Succession Act or of the renounced personal law to such cases is not in accordance with law, both these laws are of value in evolving principles of equity, justice and good conscience, for these principles can only be deduced by referring to what is common in these laws as the Roman proctors referred to the laws of Rome as well as of the provinces to work out their *jus gentium* to govern strangers who under the Roman law, had "no rights." Nay, the Succession Act itself is a legislative attempt to lay down such a *jus gentium* where parties have no particular personal law, though it does not attempt to solve the situation where there is a conflict of personal laws or where one party has a personal law and the other has none except this Act. In such cases, though they do not often arise, judge-made law may well begin with the Succession law as affording a *prima facie* system of rules of equity, justice, and good conscience, and may modify them according as their nature and character may be homogeneous or inconsistent with the renounced personal law. It is by such adjustment only that adequate justice can be done to questions between wives and husbands, Hindu co-parceners, Mahomedan co-heirs, &c., where one of them is a convert and the other is not. The Courts may well divest their minds of what is special to the individuality of any of these and retain what is common or at least what is not repugnant to the laws of the parties. Thus where X, a Hindu convert to Christianity dies leaving behind Y a half brother similarly converted and Z a full brother not converted, Y would have been postponed to Z if both he and X had been Hindus still, and Y and Z would have shared equally if Z also had been converted, for in that case the Succession Act would have applied to *all* parties. Now after Act XXI of 1850, the application of Hindu law to the case would enable Z to get the whole estate and to nullify the right of Y though it arises under the Succession Act. What ought to be the operation of Act XXI of 1850 in this case? As Y in this case had no right prior to his conversion of which the Hindu law deprives him by reason of his conversion, the Act of 1850 has no application. If X had survived Z, the Succession Act would not have applied and X, the convert full brother, would have inherited under Hindu law everything left by Z to the total exclusion of Y who would have had no personal law to give him a farthing, and would not have been able to invoke the

Succession Act. If Y himself had had a non-convert Hindu full brother dead, Y's Christian piety would not have enabled X to secure a moiety of the the inheritance received by Y from this full-brother in spite of the Succession Act. Does the accident of X and Y happening to be converts at one common moment create any equity in favour of making him a co-sharer with Z by virtue of the Succession Act? There is no equity in favour of such a right, though of course, if the Succession Act had created it, there would have been no question. The Succession Act itself proceeds (vide ss. 23 and 40) even here upon the principle of reciprocity which can only be destroyed the moment you apply its section 331 to the case. If we are right in our contention that this Act does not intend to be applied to such a case, "equity, justice, and good conscience" can only and amply be meted out by giving to Z from X's estate what X would have got from Z's estate if Z had been predeceased, i. e., the whole of the inheritance to the exclusion of Y. This view of equitable reciprocity is a corollary from the principle that if Z had predeceased X, Act XXI of 1850 would have protected X against his rights as full brother being injuriously affected by reason of his conversion. The reciprocity lies in Z's getting out of X, what X would never have got out of Z but for this Act, i. e., in X and Z having equal rights of reciprocal inheritance. If our Courts feel constrained in such cases to resort to the Succession Act, it must be for the purpose of ascertaining its spirit and as embodying equitable principles liable to modification according to circumstances and not for the purpose of slavish obedience to its words.

• There are no doubt, difficulties in evolving a judge-made law in this fashion especially with the current methods of administering justice or law in India. The incessant working of a grindmill of law reports leaves very little scope for independent thought and research either among the judges or among the members of the bar, while the undoubted benefits of following precedents such as the reports furnish have also a value which cannot be denied. But there is a limit to these as well as to all things in the world, and perhaps it is reached sufficiently when the force of so called precedents compels judges to hold that Mahomedans can give away Hindu sons in adoption simply because they happened to have been Hindus during some stage of their life, or that the Hindu and Mahomedan laws of inheritance should be applied without reference to the persuasion of the parties to be affected or benefitted by such application, or that Hindus and Mahomedans might claim inheritance under the Succession Act. The principles laid down by authorities like Lord Westbury and others that the law applicable to the succession of an individual

depends usually upon his personal status and that this status depends on his religion (1), seem to be principles of general jurisprudence which ought not to be lightly displaced by crude interpretation of the mere wording of Acts not directly enacted for the purpose and far less by that kind of inferential process which has been applied in such cases with hardly better eyes than those of people groping in the dark. If matters must come to this pass, we had better get some positive enactment of the nature of a general *lex loci* based on equitable considerations arising out of the various conflicts of our personal laws. The necessity for some such course will be realized when it is considered that, under the existing view of things, a Hindu convert to Mahomedanism or a Mahomedan convert to Buddhism can claim to succeed to the inheritance of his unconverted kinsman by reason of Act XXI of 1850, while neither the Hindu, nor the Mahomedan, nor—it is supposed—the Buddhistic law will entitle the unconverted kinsman to succeed to his converted cousin, inheritance to whom, unlike that to the convert to Christianity, will not come within the Succession Act. Unless we presume that the Acts did contemplate the absurdity, injustice, or confusion of allowing no reciprocity whatsoever in such cases and looked with undisturbed conscience upon the contingencies of such converts gaining all and losing nothing by conversion, and upon their kinsmen losing all and gaining nothing by it, the interpretations of these Acts by existing decisions so far as they lead to these results must be abandoned and either judge-made law or legislature must make bold to remedy the situation upon new lines. Act XXI of 1850, according to these interpretations, enables converts to retain the benefits of their original personal laws but does not make their own estates descendible according to them, nor does it enable the unconverted kinsman either to claim any benefit from the adopted personal laws of the converts. It in fact makes the converts take and not give and the unconverted are made to give and not take. There is absurdity either in this interpretation of law or in this law itself.

CHAPTER IV.

MARRIAGES.

THE treatment of marriages and rights flowing from them under our case-law presents a marked contrast when compared with the treatment of the law of inheritance. Rights of inheritance being specially mentioned by the Act of 1850, that Act seems to have been pointedly kept in view by lawyers and judges whenever a case of converts arose: while, in cases of that class, the decisions have applied that Act whether it was

(1.) *Barlow v. Orde* 13 M. L. A., 277, 307. *In re Mahandas Navandas*, L. L. B., 5 Bom. 154

applicable or not, it has not occurred generally to anybody to apply it in cases arising under marriage law. The result has been that while the course adopted in the one set of cases has led to complications and want of equitable adjustments, the other set of cases present both simplicity and equitable arrangements.

We have not had cases of marriages contracted between parties of different persuasion from the very beginning. We have had only cases where marriages took place between parties of one common persuasion and the husband or the wife subsequently chose to change his or her religion. The rights which marriage directly creates between husband and wife are those (1) of maintenance of wife, (2) of restitution of conjugal rights, and (3) of any interest created in reciprocal property by one's personal law. Then there are the subjects of judicial separation and divorce.

If the Act of 1850 meant to continue all "rights" of converts in spite of conversion, there is no reason why any of these rights should be lost. The instincts of both lawyers and judges have led them tacitly and unanimously to assume that conjugal rights and, with these, the right of their restitution, both become extinct as against the unconverted spouse and that the convert cannot claim the help of this Act to assert these rights in spite of the word "rights" being unqualified in its operative part: *Muchoo v. Arsoon Sahoo*, 5 W. R. 235 and *Zurudust Khan v. His wife*, 2 N. W. 370. These were cases of change of religion. *Paigi v. Shoo Narain*, I. L. R. 8 All. 78 was, however, a case in which the husband, a Hindu, had become an outcaste and sued his wife for restitution of conjugal rights. It was held that his rights as husband were not destroyed but could be decreed subject to the condition that he should obtain restoration to caste before the wife was compelled to return to him, as in such a suit it was a good defence on the part of the wife that she herself might be put out of caste if she associated with him. The decision was correct in all points for mere excommunication unlike change of religion does not make a Hindu cease to be a Hindu but only transfers him from one compartment of Hinduism into another. On the other hand the defence, though it was one which is unknown to English Courts of Equity, arises out of the peculiar circumstances of Indian life and must cause a suspension, or—what is the same—temporary forfeiture—of the husband's rights in spite of the Act of 1850. In cases of converts, however, there is a total change of persuasion and so, by the principle enunciated by Lord Westbury, there is a consequential change of personal law. The married state having been entered upon by the parties upon the implied understanding that they were to continue to belong to one common persuasion and

personal law, the destruction of that understanding by the convert must as a logical consequence bring about a total forfeiture of his conjugal rights in spite of the Act of 1850. When our case-law gives effect to this principle, it can only amount to this interpretation of the Act that the "rights" preserved by it to converts do not include conjugal rights. We may deny this effect of its interpretation by saying that the enforcements of conjugal rights is a discretionary remedy or that the rights are only equitable, that the effect of the case law only amounts to giving effect to the principles of equity courts and to a refusal to exercise discretion, and that this does not amount to any attempt to an interpretation of the Act. The first two of these propositions are no doubt correct, but the third does not follow from them. When rights seemingly preserved by an Act are denied by Courts to those in whose favour they are preserved, this can only be taken to mean that the Courts interpret the rights to be not within the Act and not that the Courts ignore or contravene a clear provision of that Act. The distinction between equitable and legal rights is not one that can affect such a question, for the rights that an Indian Act speaks of are rights so called by general jurisprudence irrespective of local or historical distinctions such as are implied by equity and common law distinctions in England. Nor is it possible to escape the situation by saying that the restoration of conjugal rights are a matter of discretion, for in the present case, i. e., when converts claim it and their spouses refuse it by reason of their continuing to belong to their original persuasions, the Courts as a matter of fact are bound to exercise that discretion against the converts and to refuse them the rights absolutely at the desire of such defendants. Paraphrase the action of Courts in whatsoever phraseology of law, it can only amount to a recognition and expression of this one clear fact that the Courts feel bound to refuse to include conjugal rights within the terms of the Act of 1850. The fact they do so without the Act being even mentioned either by themselves or by the lawyers practising before them only strengthens the presumption that the rights in question are not included in the Act by the unanimous instincts of the bench and the bar. That this is as it should be would appear from our previous discussions on the meaning of the Act.

The wife's right to be maintained by the husband is usually a correlative of the latter's right to claim restitution of conjugal right. A wife not entitled to resist restitution is also not entitled to maintenance, and when entitled to the former is also entitled to the latter. This is the usual case under our various personal laws. A divorce under Mahomedan law and the usages of some Hindu castes puts an absolute end to both but a.

change of religion does not necessarily mean a divorce, nor do all personal laws agree in recognising divorce. The right to bigamous marriages is also one not common to all such laws. The prevailing feeling in all these points is consistently and invariably to exclude all these rights from the "rights" saved to the convert by the Act of 1850 and to adjust them independently of it.

So far as the relations between converts to christianity and their non-convert spouses are concerned, these feelings are best expressed in positive enactments upon the subject. These enactments are Act 21 of 1866, Act 4 of 1869 and Act 15 of 1872.

Act 21 of 1866 is "the Native Converts' Marriage Dissolution Act" enacted in order "to legalize the dissolution of marriages of Native Converts to Christianity deserted or repudiated on religious grounds by their wives or husbands:" (Preamble) A "Native Husband" and a "Native Wife" are, for the purposes of this Act, a husband and a wife, "not being a Christian, a Mahomedan, or a Jew (or a Jewess)" : s. 3. That is to say the expressions "a native wife" and "a native husband," against whom the Act proposes to give relief to their spouses upon the conversion of the latter to Christianity, do not generally include other communities than Hindus, and the reason for this limitation of the definitions appears to lie in the fact that, while Christianity is monogamous, divorce is not allowed by Hindu law as a rule, and a convert from Hinduism to Christianity has therefore to experience special disabilities which have no place under the Christian, Mahomedan, and Jewish laws of marriage. The Act has to this extent a limited operation. If a "native" husband or wife become a Christian and his or her spouse *desert* or *repudiate* him or her *on that account* "for six continuous months," he or she may bring an action for conjugal society under the Act : ss. 4, 5. The Court may thereupon issue the usual processes to compel appearance and ascertain facts and, if the non-convert spouse does refuse to cohabit with the petitioner on the ground of his or her change of religion, an *interim* period of one year is ordered to be given to the non-convert to make up his or her mind finally, and the marriage is only dissolved at the end of that period if the refusal is still persisted in ss. 15, 16, 17. The dissolution enables either parties to marry another wife or husband (s. 19) and any provisions of personal laws on the subject are so far annulled. Proof of cohabitation before the date of the decree is practically treated as a conclusive proof of non-desertion and is made a reason for dismissing the suit. If the respondent has deserted his or her spouse solely or partly on account of cruelty or adultery, parties must have recourse to ordinary remedies and this suit

must be dismissed. If a male convert petitioner has two or more wives he must make them all respondents and the suit against all of them must be dismissed if he be cohabiting with even one of them or if even any one of them is ready and willing to cohabit with him, obviously because, he does not need and deserve the assistance of this Act in that case. The husband has to pay a pauper wife funds to enable her (1) to prosecute or defend the suit and (2) to maintain herself *pendente lite*. Even if he succeed in the suit as plaintiff (but not as defendant), the Court has the power to decree maintenance to the non-convert wife during the rest of her life: s. 28.

This Act thus lays down in effect that the marriages of non-converts are not dissolved by the mere fact of conversion of one of them, where they are "Native" as defined by it and so far agrees with I. L. R. 9 Mad. 466; see *Gobardhan v. Jasodamony* I. L. R. 18 Cal. 252. In fact the Act thinks a statutory dissolution of such marriages necessary to enable converts to marry again eventhough it admits that the conjugal rights of the convert cannot be enforced, i. e., are forfeited in spite of the Act of 1850 unless the non-convert spouse admits them. S. 19, no doubt, enables both parties to marry other people after the dissolution, but s. 28 adds that the non-convert or native wife (though not the convert wife invoking the help of the Act) may have a decree for her maintenance during her life in spite of the dissolution. This right of this wife, this prolongation of a right created by her marriage, is only a recognition of the equity due to the understanding upon which her marriage was contracted, viz., that the husband shall continue to belong to the same persuasion as at his marriage, and that the wife shall be entitled to desert him on his violating that understanding and shall suffer the least inconvenience possible by his apostacy.

This sense of the justice due to her is also recognized in the Indian Divorce Act (Act IV of 1869). That Act is not to be applicable except where the petitioner is a Christian, and among other things authorizes dissolution of marriage at the instance of a wife whose husband has since marriage ceased to be a Christian and not at the instance of a husband whose wife has ceased to be a Christian: section 2.* Maintenance to such a wife, after dissolution of marriage is provided for by this Act also: section 37. But its terms are less generous than those of Act 21 of 1866, section 28, which seems to provide for it almost in terms of the Hindu Law. There is moreover a significant distinction between the two Acts. Under Act 4 of 1869 the Christian husband has the same remedy for restitution of conjugal rights under section 32 that he has also under ordinary

* Obviously because polyandry is prohibited by all laws, and polygamy is prohibited by Christianity only.

law, for under it this right cannot be resisted except upon a plea which would enable the wife to get judicial separation or a decree for nullity of marriage; and to decrees for separation or nullity of marriage an order for maintenance might under section 37 form an appendage at the discretion of the Court whether the wife or the husband is the convert. Under Act 21 of 1866, on the other hand, there is, as pointed out, no possibility of getting such compulsory restitution which the simple plea of husband's change of religion entitles the wife to desertion or repudiation of the husband plus the same maintenance that would have been hers if the husband had been a Hindu still. The husband's conversion is in fact looked upon as amounting to a conduct which entitles the wife simultaneously to resist restitution of conjugal rights and to claim maintenance, while her conduct is looked upon as amounting to a desertion entitling her husband to dissolution of marriage—a benefit in which she may share if she has a mind. The husband's suit under the Act of 1866 is not only subject to these adjustments irrespective of Act 21 of 1850, but it stands the chance of dismissal in the other ways above pointed out if it is found that he or any of his wives of the old persuasion do or would cohabit. This is an adjustment of relations in which legislature has found a way to consolidate "justice, equity and good conscience" instead of allowing to the converts all the rights and none of the liabilities prescribed by the renounced personal law. The result of the adjustment is that the successful issue of a suit under the Act operates as a divorce decreed at the will of the parties and subject to an order for maintenance of the wife, while the dismissal of the suit operates practically as a judicial separation to this extent that it enables the wife to claim maintenance without allowing conjugal society and admits of the parties resuming married life without fresh marriage, though, until then conjugal society cannot be enforced and resort to a regular suit would be necessary to secure maintenance prior to such resumption.

The differences between Act 21 of 1866 and Act 4 of 1869 may be accounted for by the difference between the classes whom the two Acts propose to affect. Act 4 of 1869 is intended to operate between husband and wife having Christianity as their common persuasion at the time of their going to Court or where out of them a defendant has changed religion and ceased to be a Christian. Act 21 of 1866, on the other hand, applies where both parties were at one time "Native" as defined by the Act and it is the petitioner who alone has changed the "native" religion and become a Christian. The parties having married while they were "native" by persuasion and one of them having become a Christian later

on, a conflict arises between the laws applicable to them and the Act destroys the conflict by calling upon the "native" non-convert to exercise the option of continuing married life or of accepting judicial separation or divorce upon a footing of equitable adjustments. In the case of the separation the Christian husband continues all matters except, the separation upon the footing of his "native" marriage, and his continuance of polygamous relations entered into before his conversion will not be an offence in spite of his new religion though any addition to the number of his previously married wives, after his entry into monogamous Christianity, will be void and probably criminal too.

There has been a difference of opinion about Act 4 of 1869. In *Zaburdust Khan v. His wife*, 2 N. W. 370, it was held that this Act was intended to apply to such marriages as are recognised by Christians, and not to polygamous contracts, such as are the unions known as marriages to the Mahomedan law, and that such polygamous contracts are not subject to the jurisdiction of the Courts created by this Act. In *Gobardhan Dass v. Jasodhamoni Dass*, I. L. R. 18 Cal. 252 the Court read Acts 21 of 1866 and 4 of 1869 together and held that, as the former did not dissolve a non-Christian marriage, it may be dissolved under the latter Act, as the person presenting a petition was a Christian who sued for dissolution of his marriage with his wife on the ground of her living in adultery, both husband and wife being converts to Christianity from Hinduism at the time of the petition though they had married when they were Hindus. In *Perianaya Kavi v. Potha Kavi*, I. L. R. 14 Mad. 382, the Court was held to have no jurisdiction in a case where a petitioner, having married before conversion to Christianity, sought divorce on the ground of his wife's adultery prior to his conversion. In *Thapita Peter v. Thapita Lakshmi*, I. L. R. 17 Mad. 235, the Madras Court dissented from I. L. R. 43 Cal. 252 and held that having regard to section 7 of this Act and to the principles followed in English decisions, the marriages contemplated by the Act are those founded on the Christian principle of monogamy and that consequently it does not contemplate relief in marriages under the Hindu law which do not exclude polygamy from their principle. Husband and wife in this case were married while Hindus but both were converted to Christianity at the time of the proceedings, and divorce was sought by husband on the ground of the wife's adultery before and after their conversion.

The view of the Madras Court in the last case leads to this result that, while a Christian whose "native" wife is "native" still, may obtain divorce under the Act of 1866 without alleging adultery, there is no such

or any other remedy open to a Christian whose wife, even though openly adulterous, chooses to evade the consequences of her conduct by becoming a Christian along with her husband. Such a wife can successfully manage to escape divorce under both these Acts which, so far as can be seen, were intended to supplement each other and to give an exhaustive system of relief to all converts to Christianity. The reliance placed by the Madras Court upon section 7 of Act 4 of 1869 ought therefore to be cautiously accepted, for, whether that reliance be well or ill placed, the Calcutta Court was at least correct in reading both Acts together and in considering the necessity of weighing their results together. The above-mentioned section 7 lays down that the *action and grant of relief* under the Act shall, *as nearly as may be*, be conformable to the action and grant of relief in similar cases in English Courts as regards *principles and rules*. This only amounts to saying (1) that the principles and rules in both countries shall be approximately similar and not necessarily identical in all points and (2) that this approximation is to form a guide in the search of principles for appreciation of merits and also in the rules of procedure and practice in matters omitted by the Act. Neither the principles, nor the rules, are to affect the foundations of the jurisdiction of the Courts, for this jurisdiction is to arise before the Courts have to *act or grant relief*. The search for this jurisdiction must be made in the other and express provisions of the Act and not in principles and rules which are left to be gathered from a different system of law and are only allowed to be applied approximately, that is, so far as the circumstances of this country permit. The significance of the necessity of such approximation will appear from section 9 which gives a distinct importance to questions of usage even before the Court has begun its hearing. If the Act were intended for Christians married in only Christian forms "in India" [section 2, para 3, clause (a)], there would hardly be room for considering usages, for the difficulty in case of Christians baptised or married in India as Christians usually arises not from their having complicate usages but from their having no usages at all, as they are quite a new community in the country. S. 2 excludes the jurisdiction of the Courts created by the Act only where the petitioners are not Christians and so impliedly gives jurisdiction irrespective of the prior and present religions of parties other than its petitioners, provided these last are Christians. The section further lays down conditions of jurisdiction in cases where such petitioners apply for decrees for dissolution, or nullity of marriages, but significantly *omits to prescribe any conditions for the other forms of relief* allowed by it and even as regards decrees for dissolution

or nullity of marriage it considers the subject of the form of marriage and feels content with requiring that India should be the locality of their solemnization and is silent as to the religion of the rites with which they were solemnized. The Act, like Act 21 of 1866, nowhere defines "marriage" as being confined to one in Christian or monogamous form, and a great deal of confusion will be the result of restricting "marriages" to marriages in such form in the ideas of "consanguinity", "bigamy", and "marriage with another woman" in s. 3 and elsewhere as also in the ideas of husband and wife throughout the Act and specially in s. 19.

It would seem on the whole then that the view of the Calcutta Court on the scope of this Act is sounder and more consistent with the trend of legislation in this matter than the view of the Madras Court. Act 21 of 1866 provides relief where a conflict between the personal laws of husband and wife, originally not-Christian, arises on account of the conversion of one of them to Christianity and where there is no other ground for seeking relief. Authority for seeking such relief on the other grounds would be wanting where the conflict arose, and that desideratum was supplied, to the extent noticed in our preceding para, by Act 4 of 1869, which also covers cases where no such conflict arises. It thus kills several birds with one shot and, in allowing reliefs other than decrees for dissolution and nullity of marriages, goes even beyond the kind of circumstances which had arisen in the Calcutta case.

The above view of Act 21 of 1866 and Act 4 of 1869 as forming reciprocally supplementary enactments to give relief after marriages contracted so as to create a conflict of personal laws, will receive some further light and support by turning to those Acts which were enacted to legalize the solemnization of marriages contracted under such conflict. Act 15 of 1872, called The Indian Christian Marriage Act, provides for solemnizing marriages between parties one or both of whom is a Christian or Christians. A Hindu may marry a Christian under this Act, and a marriage between them, if solemnized contrary to the provisions of the Act, would be void, under section 4. If an unauthorized priest solemnized it, he would be guilty under the Act: *Queen Empress v. Yahan*, I. L. R. 17 Mad. 391. This Act is supplemented by Act 3 of 1872, which provides for marriages between parties neither of whom professes "the Christian or the Jewish, or the Mahomedan, or the Parsi, or the Buddhist, or the Sikh, or the Jain religion"; section 2. Section 17 provides that Act 4 of 1869 shall apply to marriages under this Act—a point well-worth consideration in comparing the above discussed conflicting views of the Calcutta and Madras Courts on the Act of 1869. Section 19 provides that

this Act will not affect the validity of marriages not solemnized under its provisions and that the question of the validity of any such marriages will be decided as if this Act had not been passed. This Act would cover (a) people who have renounced the persuasions mentioned in section 2 and embraced others which are not included in the list but give rise to the application of their own ancient usages and laws as being peculiar to these newly embraced persuasions, (b) people coming under the same category except in this point that the new persuasion embraced by them has not its own ancient usage and law, and (c) people who belong by birth or domicile to personal laws not included in the list in section 2, classes (a) and (c) may marry either under this Act or under the laws peculiar to their present persuasions, while class (b) will find in this Act the only law applicable to their body on the subject.

Acts 21 of 1866, 4 of 1869 and 15 of 1872 form then a complete though not exhaustive code of marriage laws for the solemnization and undoing of all intermarriages between Christian and non-Christian communities of India, while Act 3 of 1872 seems intended for cases where both parties are outside the scope of all personal laws recognized in Indian Courts. Cases covered by this last Act seem practically to be more hypothetical than actual. The former set of Acts seem on the other hand to leave sufficient gaps to necessitate the application of equitable principles and judge-made law. Act 15 of 1872 by itself leaves no such gap, for it applies to all intermarriages between Christians and others as well as between Christians and non-Christians. Act 4 of 1869 applies also as between Christians and non-Christians in all matters relating to restitution of conjugal rights, judicial separation, divorce, nullity of marriage, and alimony, but is confined to cases where the initial step to move the Court is taken by a Christian and there are other limitations upon the operation of the Act as laid down by its sections or by case-law. These limitations leave ample gaps not covered by direct legislation. Similar gaps are also left by Act 21 of 1866 which does not apply to questions between Christians and those who are not "native" husbands or wives within its meanings. Intermarriages between Mahomedans and Christians, both of whom have their own separate divorce laws, are not covered by this Act. Nor are "native" wives and husbands allowed to take the initiative in setting in motion the machinery provided by this Act. There are thus considerable and numerous gaps left by these Acts for the application of those principles of "justice, equity, and good conscience" which must be invoked where the personal laws of parties are in conflict with each other, and these principles will no doubt

be supplied to a great extent by those adopted in these Acts as being just and equitable, though of course the points of convergence and divergence between the laws of the parties will also have to be given due weight.

That a marriage is not dissolved by the conversion of a party to it, whatever the original and whatever the new persuasion of the convert, may be taken as an established principle which could not have been more severely emphasised than in those cases where second marriages of wives were held to amount to so many offences of bigamy. Thus in *In re Millard* I. L. R. 10 Mad., 11, a wife who was a Christian in infancy, became a Hindu later on, then became a Christian, and then married a Christian husband in the life of her Hindu husband whom she had married during her Hindu days, was convicted of bigamy. Similarly, the Hindu wife of a Hindu husband, having become a Mahomedan and married a Mahomedan, was also convicted of bigamy: *In the matter of the petition of Ram Kumari*, I. L. R. 18 Cal. 264. The point seems one on which all religions and laws are of one mind, and the conversion of the wife does not enable her to remarry. A convert husband, on the other hand, will be most likely judged by his new faith, as the several laws on the subject differ. A convert from a polygamous faith to a monogamous one will be guilty of bigamy if he marries an additional wife after his conversion. A convert from a monogamous faith to a polygamous one will not be similarly guilty if he adds a fresh wife to his newly constituted seraglio. His first wife cannot, however, remarry unless she obtains a divorce under one of the above mentioned Acts or after becoming a convert to some religion that gives divorce without going to a Court. The non-convert husbands in a monogamous marriage and every non-convert wife are thus at a disadvantage which they can only remedy by overcoming their religious compunctions to the extent of allowing his or her conjugal society to the convert spouse and of suing for restitution of conjugal rights, if the convert refuses them. To that suit the convert cannot plead his or her own conversion.

If, in prosecutions for bigamy in this way, the adopted law of the convert has settled the point at issue, the persuasion of the non-convert wife has settled her claim to maintenance whether she be willing oraverse to submit to the conjugal rights of her convert husband. Thus in *Mansha Devi v. Jivan Mal*, I. L. R. 6 All. 617, the right of a Hindu wife to maintenance under the Hindu law from her husband who had embraced Mahomedanism, was held to be undoubted, if the cost of her separate residence was allowed to be included in the maintenance amount. The equitableness of this course will appear both from the view taken by Act.

21 of 1866 as also perhaps from our Criminal Procedure Code which allows maintenance of a scantier kind to all wives coming under its protection. "*Anonymous case*", in 4 Mad. Ap. 8, decreed such maintenance to a Christian wife whose husband had reverted to Hinduism. The Code considers questions of personal laws irrelevant in deciding these matters (*Luddun Sahiba v. Kamar Kudar*, L. L. R. 8 Cal. 736), and holds marriage to be marriage whatever the fluctuations of religions among the parties. There is also no wonder that what Act 21 of 1866 considers equitably due to such a wife, should also be considered equitable by civil Courts in cases coming within its principle though not within its scope. In adjusting these equities Act 21 of 1866 lays down a procedure which begins with assuming itself that the non-convert persists in repudiating or deserting the convert on account of the conversion, while civil Courts seem to imply that change of religion itself being contrary to the initial understanding at the marriage constitutes a desertion of the non-convert spouse by the convert or a piece of misconduct by the latter towards the former and look upon it as a sufficient defence to a suit for conjugal society and a sufficient wrong to support a suit for maintenance. The Criminal Procedure Code would probably consider it a sufficient cause for not accepting the husband's offer to live with petitioner as his wife. This last point is however doubtful; and there is something to say on either side in view of the wording of the Code, though probably there is more reason for its not diverging from the standpoint of civil Courts as above set out. Nobody in India dreams at the moment of marriage that his or her partner will ever cease to be of the same religion and even caste as at that moment, and the slightest note of alarm that such a change in religion or caste as a likely contingency in future will be a sufficient warning to operate as the strongest and surest inducement to the other party to at once desist from the marriage. Change of religion or caste is thus a cruel and unpremeditated surprise by the convert upon the other party, and neither the Court's refusal to enforce conjugal rights against the latter nor its award of maintenance where this other party is a wife, afford adequate compensation for the destruction of the most vital understanding forming a part of the basis of all Indian marriages. Considering that mixed marriages, except between different sub-castes, are invalid at Hindu law (*Melaram v. Thanooram*, 9 W. R. 552, and *Narain Dhara v. Bakhal Gair* I. L. R. 1 Cal. 1) and that the issue of such marriage is illegal (I. L. R. 19 Cal. 101), the repudiation of not simply the caste but even of the religion of the marriage hour by one of the parties thereto would have enabled the other party to treat the marriage

as void from the date of such repudiation and to claim equitable compensation for the conduct of the other side if marriages were placed by law on the same footing as ordinary contracts. The fact that they are not so placed out of religious considerations, ought not to outweigh even considerations of equity due to a person who has been wronged in such a vital direction and is unable to get the fullest avoidance and compensation that a divorce can give under the Acts on the subject. A right to resist enforcement of conjugal society and at the same time to claim maintenance would seem to be but a matter of justice, equity and good conscience from convert husbands to their non-convert wives under the circumstances. Here is a great wrong and it ought not to be without such remedy as the state of existing laws does not counter-indicate.

The remaining rights arising out of marriage are those acquired by husband and wife in respect of each other's property and not relating to reciprocal succession. S. 4 of the Succession Act provides for this set of rights by laying down that neither husband nor wife shall acquire them by marriage. In *Hill v. Administrator General of Bengal*, L. L. R. 23 Cal. 506, the Calcutta Court laid down very lucidly how and why this section does not refer to succession. S. 331 which relates to succession only will therefore not apply to cases governed by s. 4, nor will it be contended that s. 2 which also relates to succession will cover s. 4. At the same time this aspect of the sections leaves undefined the people to whom s. 4 is to apply. Neither Hindu nor Mahomedan marriages transfer any vested proprietary rights from husbands to wives or from wives to husbands, and the laws of both these persuasions on this point are only consistent with s. 4 which, however, will seem to be of use where the married pair are of different persuasions in which case the section will have an equitable and necessary application quite in conformity with Act 21 of 1850. It forms therefore the personal law of all such people.

[To be continued.]

RECENT ENGLISH CASE.

ACTION—Cause of action—Inducing breach of contract—Bona fide Advice—Conspiracy—Intent to injure. A person who on being asked gives honest and bona fide advice to another which induces him to break a contract of service with a third person is not liable to an action at the suit of that third person, even though he has sustained damage by the breach of the contract; and the same is the case where several persons have combined to give the advice, if they have no malicious intention to

injure the third person. *GLAMORGAN COAL COMPANY v. SOUTH WALES MINERS' FEDERATION* (1903, 1 K. B., 118).

REVIEWS.

The Law of Perpetuities. Tagore Law Lectures, 1898. By Dr. ASUTOSH MUKHOPADHYAY, M. A., D. L. CALCUTTA: Thacker, Spink and Co. 1902. Royal 8vo. Pages 316 and xxv. Price Rs. 12.

THE Rule against Perpetuities owes its origin in the English Jurisprudence to the great Chancellors whose function it was to moderate the rigour and remove the anomalies of the Common law. English law does not allow property to be tied up longer than for a life in being and twenty-one years after. The Indian Succession Act (X of 1865) lays down a somewhat different rule. Under the former the additional period allowed after lives in being is a term of twenty-one years without reference to the infancy of any person: under the latter the term is the period of minority of the person to whom, if he attains full age, the thing bequeathed is to belong. The learned author has treated this abstruse subject in twelve lectures forming as many Chapters. The origin and history in English and Indian law of this Rule; its scope and corollaries; the interests affected by it; its operation upon gifts to a class, upon gifts to a series, and upon powers; the principles of construction governing it; its application to religious and charitable trusts; its effect upon the creation of trusts for accumulations; and, lastly, its working with regard to restraints on the alienation of property are all dealt with so exhaustively that one wonders at the part played by this Rule in the domain of English and Indian Jurisprudence. From the materials accumulated in the shape of decisions, the distinguished Doctor has constructed a solid and substantial framework of the law of perpetuities with first rate finish. Written as it is by a renowned lawyer, and with the conscientious carefulness that might be expected from him, this work will, undoubtedly, prove of great assistance to those who have to consider the application of the principles embodied in it. It is also very neatly got up.

Whitaker's Almanac for 1903. By JOSEPH WHITAKER, F. S. A., LONDON: The Whitaker Almanac Co., 12 Warwick Lane, Paternoster Row, E. C. 1903. Crown 8 vo. Pages 792. Price 2 s. 6 d. net.

THIS annual publication is now in the 35th year of its existence: and every year it has managed to enrich its treasures by fresh items of information. The first issue contained 425 pages; the present contains 792 in solid non-pareil types. In this edition, "the linking up of the Empire

has occasioned a more than usually thorough revision of the hundred pages dealing with the Indian Empire and the Dominions beyond the seas; home affairs also receive more detailed attention in short historical sketches of the functions of Government Department, and in a schedule of ministers from the time of Pitt, an increase of space being also assigned to the . . . Postal Guide and the Customs Tariff." It further includes promotions and appointments gazetted during the year on account of War Service, Coronation and Birthday List; while certain familiar features of the book, such as Degrees and Hoods, Hall Marks on Plate, and Voters Qualifications retain their places. This detailed description of some only of the many-sided features of this Almanac is here adverted to, because it is not so widely known in India as it should have been. The value of this handy book of reference cannot be overestimated. It is a mine of information which every citizen of India would like to know and ought to know.

The Legal Practitioners Act (XVIII of 1879). By BISVESVAR MUKHERJI, M. A., B. L., Vakil. CALCUTTA: R. Cambray and Co., 6 Hastings Street; S. O. Auddy and Co., 58 and 12 Wellington Street. 1903. Crown 8 vo. Pages XXIV and 182. Price Rs. 2.

A HANDY, well-arranged, and neatly-printed commentary on the Legal Practitioners' Act—such, in brief, is the description of this book. The annotations are drawn from the rules framed under the Act, and from decided cases reported in Government and private series of reports of the four High Courts in India. The appendix contains portions of other Enactments which have a bearing on the subject-matter of the book; those portions also are annotated. The index at the end will be useful for purposes of reference.

A Treatise on the Nature and Scope of the Science of Law. By SYED KARAMAT HUSSEIN, of the Middle Temple, Barrister-at-Law. ALLAHABAD: City Press, 1902. Roy. 8vo. Pages 252 and vi.

THE first sixty pages of this book contain an exposition of the principles of Jurisprudence. It is divided in three parts: Part I is introductory; Part II specifies the Nature and Scope of the Science of Jurisprudence; and Part III criticizes Jurisprudence as conceived by Austin and others. The bulk of the book is occupied by a number of Appendices, amounting to 70, and which embody informing extracts from a variety of sources. The book forms a useful addition to the Indian books on Jurisprudence.

Bombay Law Reporter.

March, 1903.

CONFLICT OF LAWS BETWEEN • CONVERTS AND NON-CONVERTS IN INDIA.

GOVERDHANRAM MADHAVRAM TRIPATHI, B. A., LL. B.

VAKIL, HIGH COURT.

[Continued from p. 46].

CHAPTER V.

NATURAL GUARDIANSHIP AND RIGHTS OVER CHILDREN.

ACT XXI of 1850 has been construed by our Courts as preserving to convert parents their rights as natural guardians over their non-convert children, and the protection of such rights has been decided in favour of convert fathers against non-convert mothers and other relations.

• It cannot be too frequently pointed out that such rights are not the subject matter of Act XXI of 1850—they are not the “rights” meant by its section 1. Rights over children are as much personal rights as conjugal rights, and both are excluded from this Act for common reasons. I. L. R. 1 All. 549 and 5 W. R. 235 preserve the “rights” of convert parents in spite of the laws of their original persuasion on account of the word “rights” in this Act. The interpretation is wrong, as pointed out, and the decisions are erroneous.

It would be strange, indeed, if an Act were passed, annulling the provisions of personal laws, to provide guardians for infants born to those laws without providing substitutes for the guardians so undone. The decisions above mentioned suggest that the convert fathers were guardians of their infants by nature and that such guardianship was saved by Act XXI of 1850 from forfeiture. The terms “guardian by nature” or “natural guardians” are no doubt a convenient form of expression, but they only imply “duties” of guardianship to be regulated

by the "rights" of wards, and not "rights" of guardianship as against those of the wards themselves. Act XXI of 1850 may or may not preserve the rights of guardians against third parties; but there are no rights, so to speak of, inherent by nature or otherwise, in any guardian, to compel infants to submit to such guardianship without regard to the rights of wards under the personal laws of the wards themselves. There are no rights of this latter kind ever vested in guardians, and such rights of guardianship as against their wards are not such existing entities as can be saved from forfeiture by Act XXI of 1850. A guardian's guardianship is only a bundle of duties towards the ward, and if the personal law of the guardian conflicts to the slightest extent against the rights of the ward under his personal law, it is the former that must yield to the latter and not *vice versa*. The decisions in question thus proceed upon a perverted view of the first principles of the law of guardianship and hence their erroneous interpretation of the Act of 1850.

Neither by English law, nor by any other system of law in force in India, is the "right" given to a convert parent to force himself or herself upon the child irrespective of the personal religion and law of the latter. The only object for consideration by Courts in such cases has been the *welfare of the child* to be affected by the appointment of the guardian and not any natural or artificial right of the parent to appoint or to be appointed a guardian. Where an orphan, the child of a Protestant father and Roman Catholic mother, had been left without a guardian, the Court, considering only the *welfare* of the child, ordered her to be delivered to the mother's cousin, a Protestant, to be brought up as a Protestant, although the child had been, with the father's consent, baptized as a Roman Catholic: In *re Violet Nevin*, an infant, [Obitty J. (1891) W. N. 19, affirmed by C. A. (1891) W. N. 83; both Courts (1891) 2 Oh. 299]. In this case even an ante-nuptial agreement as to the religion of children was held not binding. In *Reg. v. Gyngall* (C. A. (1893) 2 Q. B. 232) it was held that the Court would consider the *interests of the child* and refuse its custody to the legal guardian—even without misconduct on the latter's part. In these cases the Court considered simply who ought to be appointed guardian in the interest of the child and not what this or that person wished or claimed as a matter of right over the child.

Our Indian Acts also lay down a similar principle. Under Act IV of 1869, sections 41 to 44, the Court is to make such provision in the final decree, as it *deems proper*, with respect to the custody, maintenance, and education, of the minor children of the parties to the Divorce Proceedings. That Act applies to marriages under Act III of 1872, s. 17. The same

principle is laid down by the Parsee Marriages Act XV of 1872, s. 44.

The only modification of this principle is to be found in Act XXI of 1866, section 27, which lays down that a dissolution of marriage under the provisions of that Act "shall not operate to deprive the respondent's children by the petitioner of their *status as legitimate children, or of any right or interest which they would have had, according to the Native law applicable to them, by way of maintenance, inheritance, or otherwise, in case the marriage had not been so dissolved as aforesaid.*" This section seems to assume that the interest and welfare of the child is the thing to be considered and defines that such interest and welfare shall be best looked after by giving to the child the rights and interests due to it under the personal law of its non-convert parent. Such is the provision of this Act for cases coming within its scope in utter defiance of all views as to the fancied rights of so called natural guardianship of the Christian father or mother of the child. The rights of the child to "maintenance, inheritance, or otherwise" would no doubt include its right to be placed under proper custody compatible with its "Native law and religion."

Whence a right of natural guardianship inherent in the convert parent was fished out by the Courts that also saved it from forfeiture by having recourse to Act XXI of 1850, is not known. The decisions which assert such a right are in accordance neither with first principles nor with the trend of our own legislation and its views of "justice, equity and good conscience" or of the circumstances of this country. It can only be right to overrule them on any of these grounds.

• In *Skinner v. Orde* (14 Moo. L.A. 309), a case under Act XL of 1858 and XXI of 1861, the question was about a minor daughter of sixteen years of age, of Christian parents, one of whom—the mother—had become a Mahomedan. The girl chose to go with the another and profess her new religion. The Privy Council confirmed the High Court's decree removing the minor from the mother's custody and placed her under a Christian guardian. The Privy Council in doing so enunciated some principles of general application. The child's religion must ordinarily be presumed in India to be that of the father: this is to be noted along with the fact that in this case the father had not changed his religion and it was the mother who had changed hers. The duty of a guardian was, under the circumstances and in the absence of controlling circumstances, laid down to be to train the child in the father's religion. They laid down the Court's duty to be to do what was best for the child, enunciated that her best welfare was to be presumed to lie in her continuing in the religion to which she was born and not in her changing

it because one of her parents happened to change it, and took it that her social and legal *status* should also follow this religion in her own best interests. The remark of the Privy Council that her religion was presumably that of her father may be safely assigned to the circumstance that it was he who happened not to have changed his religion. Had it been the mother that had not changed her religion and the father that had changed it, their Lordships could have only presumed the minor's welfare to lie in continuing in the mother's religion. What seems to have weighed with them was the continuity or change of original religion, and not the sex of the parent. They further held that even the asserted wish of the minor, also, to change her religion, in conformity with that of the mother, would not necessarily alter the case unless perhaps where the advanced age of the minor and the settled character of her religious convictions would render it improper or impossible to attempt to restore her to her former position.

Act VIII of 1890, our present Guardians and Wards Act, lays down in sections 17 three principles of general application for consideration by Courts in exercising their discretion in appointing guardians:—

1. The minor's welfare, consistently with his personal law, to be aimed at.

2. The "welfare" of a particular *minor* to be tested by considerations of his age, sex, and religion, of the proposed guardian's capacity, character, nearness of kin, and past or present relations with the minor or his property, and of the wishes of deceased parents.

3. The minor's own wishes if he be old enough to be consulted.

These three principles cover almost the same ground as those laid down by the Privy Council in *Skinner v. Orde*, and the latter may be safely used to interpret the former. The second of these includes a consideration of the religion of the minor, and there is no reference anywhere to the religion of the parent. The first of these principles presumes the minor's welfare to lie in considerations consistent with his personal law. The religion and personal law of the minor would seem to be those to which he was born, i. e. those to which his parents belonged at his birth, and not that to which one of them has become a convert subsequently to that birth. The minor's own choice of religion and personal law may indirectly induce him to prefer this or that guardian, but beyond that preference the Act seems to leave him no further scope. Sections 6 and 7 lay down that his welfare and personal law are to be consulted even as regards the necessity of appointing any guardian at all.

Courts will, of course, guide themselves by these principles when

moved to appoint guardians under this Act. But occasions arise for their recognising the authority, and giving effect to the acts, of those who have acted as *de facto* guardians without being appointed by Courts. What are called natural guardians have usually to act as *de facto* guardians with certain rights as against strangers in the interests of, and as a matter of duty to, infants. These rights are in substance the rights of the infants exercised through these natural guardians who are invested by the personal laws of the infants with powers of acting and protecting them in the absence of legal guardians. Strangers, not invested with such powers by such law and yet intruding to exercise such powers are guardians by their own tort liable to be displaced by natural or legal guardians on principles closely analogous to those applied against executors *de son tort*. They are trespassers who, under other circumstances, may have to thank themselves if they are criminally prosecuted. It is enough to note that none but natural guardians are entitled to act until legal guardians are appointed.

We have noted above that convert parents are at times treated by our Courts as natural guardians in spite of their disqualifications to act as such under their original personal laws. The fact that this is done under the authority of Act XX of 1850 will show that personal laws put an end to these rights upon conversion. We have seen that rights of guardianship are erroneously brought within the purview of that Act, and therefore the cessation of these rights is not affected by it. Moreover, the Act affects the rights of converts and not of non-convert infants to have guardians under their own, i. e. the infants', personal laws and not otherwise; and therefore even if the Act applied to the personal rights of converts claiming guardianship, it cannot by anything in its own express wording have anything to do with such rights of the infants themselves, as no guardian has any right to be appointed as such against the rights and interests of the minors. This Act is thus entirely inapplicable to claims of guardian parents in this direction. But assuming for a moment that it is applicable, we have to remind ourselves that upon a proper construction of this Act it does not enable converts to claim rights under the renounced personal laws but only those due to them under "equity, justice, and good conscience." We shall try to see what our usual model principles, viz., those recognised in England, consider to be just, legal, and equitable in this matter in the interests of infants.

The so called right of parents to the possession of the child is not absolute but subject to the control of the Chancery Court as representing the king as *parens patrias*: *Warner, Ex parte* (4 Bro. C. C. 101). The Court, however, will only interfere with paternal rights in cases of

very gross misconduct, and comparative destitution is not a sufficient ground for such interference: *In re Pulbrook* (11 Jur. 185). The latter part of this decision seems to have been overlooked in L. L. R. 16 Bom. 307, where Mr. Justice Bayley considered the fact of the minor's mother having no further earning than eight annas a month as a reason for the Court's allowing her minor daughter to go over to the missionary defendant in spite of the mother's claim to her custody. Mr. Justice Bayley's additional reason for the said decision was that the minor girl, who was nearly sixteen years old, was said to be willing to prefer the missionary to her mother, and the order was to allow the girl to go where she chose after the decree. It would have been safer and more legal if he had asked the girl herself in open Court, before the decree, what her willingness was. The learned judge seems also to have omitted to note that a Court of equity has no jurisdiction to remove a child from the custody of the parents merely because it would be for the benefit of the child: *Curtis v. Curtis* (28 L. J. Ch. 458). This is necessary to note in the present connection, because, where Indian parents claim restoration of their children from mission houses, the former are ordinarily likely to be comparatively destitute while the mission houses can always command means and competence enticing and seducing enough by their secular equipments. It would always be for the secular benefit of ordinary Indian children to live in such mission houses, but it is supposed that no judge would make it a rule to make such benefits a ground for refusing to Indian parents their children on this ground.

Courts cannot also be too much cautioned against consulting the wishes of minors exposed to the allurements and influences of such mission houses. An infant at the age of ten being brought up from a school, on *habeas corpus*, at the instance of her mother who was guardian for nurture, although it was deposed that the child was of intelligence and wished, on religious grounds, to remain in the school, the Court refused to examine the child and ascertain her intelligence, holding that a guardian for nurture has a legal right to the custody of the ward irrespectively of the wishes of the ward, unless it is shown that the custody is sought for improper purposes or that the application is not bona fide, or that the guardian applying is grossly immoral: *Rag v. Clarke, In re Rios* (7 El. & Bl. 186, 28 L. J., Q. B. 169). The soundness of this principle can be questioned in this country only at the cost of all political wisdom if not of barest justice and equity, if we bear in mind the difference in mental powers between the missionary gentlemen of superior education and eloquence on the one hand, and of minor sons of illiterate parents, whose confidence in the justice of

the British Raj is the only reason for their permitting their dearly loved children to breathe the atmosphere of missionary schools and societies at a tender age and before Indian religions have been given time and scope for being understood by them, on the other.

There is a great likelihood of people not being able to appreciate the exact line which separates the cases where Courts will protect and where they will assail the authority of natural guardians. We may begin an attempt to distinguish these cases by noting it in the first instance that one set of tests applies where a Court is called upon to consider the propriety of displacing the authority of natural guardians, while another set of tests is applied where the question is not of displacing anybody's authority but of considering the claims of rival claimants to being preferred as guardians. In the latter case again the rivalry must be either between those entitled to natural guardianship or between those who are strangers and must receive legal authority before being entitled to act as guardians. Where the rivalry is between a person entitled to natural guardianship on the one hand, and a stranger on the other, the question at issue is not of preferring the one to the other but of displacing the *prima facie* authority of the former, and no question as to the fitness of the latter to be appointed can arise until it is in the first instance found that the displacement of a natural guardian must take place.

Where the question is one of this sort of displacement of natural authority, the cases will be found to show that the question must be solved by considering, not whether it is for the mere benefit of the infant that the displacement is sought, but whether the infant's position and interests would be jeopardized beyond a particular limit. If there is no such jeopardy, or if the jeopardy is not beyond a particular limit, no Court will displace the guardian on the mere ground that an infant would be better off by the displacement than without it.

Where, however, the Court has to consider rival claims between natural guardians of equal ranks *inter se*, it will arrive at its decision by considering the balance of injury and benefit to the minor and preferring him by whose appointment the best balance may be secured in favour of the minor. Where the rivals are not entitled to natural guardianship until others with a better title are displaced, the question is a mixed one of displacement as well as preference, of jeopardy as well as benefit. Where the rivals are strangers, however well meaning, the question is one of preference only and so of the balance of injury and benefits.

It was in view of this distinction in principle that the Court in *Curtis v. Curtis* (cited above) declined to interfere with paternal authority.

merely because such interference would *benefit* the child. The Court in *In re Flynn* (2 De G. & S. 457) pointed out that before the jurisdiction of a Court to deprive a father of his guardianship of the children can be called into action, the Court must be satisfied that the father has (1) so conducted himself, or (2) placed himself in such a position, as to render it *not* merely *better* for the children, but *essential* to their safety or welfare that the father's right should be interfered with except in the case within 2 & 3 Vict. c. 54. Mr. Justice Bayley, in his decision above cited (I. L. R. 16 Bom. 307), has quite lost sight of this distinction. The case of *Skinner v. Orde* which he relied upon was one in which the mother had changed her religion and he was unable to deduce from it the right principle applicable to the case before him as there was no question of the parent's change of religion in that case. The question of consulting the minor's change of religious convictions could only arise where there is a conflict between the religious convictions of its two parents.

Where a parent changes his or her religion, he or she places himself or herself in such a position as to render it essential, within the meaning of *In re Flynn* above cited, to the safety and the welfare of the child that the parent's authority should be interfered with. No doubt mere peculiarity of the natural guardian's religious views is, as remarked in *Curtis v. Curtis* (above cited), unimportant in this connection, but a father's authority over his children was controlled on the ground of his professing *irreligious* principles: *Lyons v. Blenkin*, (Jacob 267); *S. P. Wellesley v. Beaufort (Duke)* (2 Russ. 1); *Shelley v. Westbrook*, (Jac. 266). The Court has jurisdiction to prevent parties preaching irreligious doctrines in the presence of their children: *De Mannerville v. De Mannerville*, (10 Ves. 58). In some of these cases the irreligiousness of parents was associated with immorality or the two were placed on equal footing. How far their principles should be modified in India may form a fit subject for subtler disquisitions. But one thing is certain that change of religion in India is far more intimately connected with social and legal status than it is elsewhere, and Hinduism considers Mahomedans and Christians as *Mlechhas*, and Mahomedanism considers Hindus and Christians as *Kafers* in a profounder sense for practical, social and legal purposes than that in which the Roman and Protestant Churches view each other. The one religion looks upon the other as irreligion and more than such a change from one department of religion to another as is implied when a Protestant becomes a Catholic, or a Sunni becomes a Shia, or a Vaishnav becomes a Saiva. This fundamental distinction makes change of religion in India a far more efficacious ground for displacing the authority of convert parents.

than it does in Europe. In England the father will be refused guardianship of his children "if they cannot associate with him without moral contamination" or "if, because they associate with him, others will shun their society": Anon. 2 Sim. N. S. 54. In India where prostitutes form a class by themselves and several low castes sell their daughters at *Asura* marriages, it will not be possible for Courts to refuse to parents of these castes guardianship of their children on the ground of their professing immoral practices, because the associations to which these children were born do not regard these practices as a ground for shunning their society, which they *would* change the moment the children changed their religion. The "welfare and safety" of these children must here be judged by the tests of these people themselves and not by those of others who place morality above religion. The change of a parent's religion is here a change of his position jeopardising the social and legal status of the children to such an extent that the former becomes unfit to associate with the latter if they are to remain in *status quo* until they reach their majority and can exercise their own independent judgment as to wherein their safety and welfare lie.

We may take up another aspect of the same matter. Where the mother of an infant under seven years of age and having custody of it, is living separate from the father and has a good defence to a suit by him for restitution of conjugal rights, the Court may make an order continuing to the mother the custody, such a case being within the equity, though not the letter, of 2 and 3 Vict. 3 c. 54: *In re Tomlinson*, (3 De G. & S. 871). Change of a husband's religion gives the wife in India a valid defence to a suit for restitution of conjugal rights, as pointed out elsewhere, because the change in husband's position by his conversion renders him unfit for the wife's society according to the understanding which formed the basis of their marriage. She has a right to prevent the child of that marriage from being defiled by being given over to associate with such a husband. Both father and mother are natural guardians of equal rank, and the safety and welfare of the child lies presumably in the society of that one of the two who is not so defiled. Equity lies in preferring the mother here and, if the father is a natural guardian of higher rank than the mother, in displacing her from guardianship. The competition in *Skinner v. Orde* was not between two natural guardians but between the mother as a natural guardian on the one side, and strangers whose only connection with the minor girl was that they professed the same faith as that to which she was born and brought up. The girl herself had changed her faith and costume along

with the mother and was nearly sixteen years of age. Neither her own wishes, nor the parental rights of the mother, were enough in the eyes of the Lords of the Privy Council to save her from being forced from the custody of her parent into that of strangers. The Lords in coming to their decision were guided by the view that the house of the convert parent after her conversion and remarriage was "no longer a fit home for a Christian girl," i. e., it would appear, for a girl born to Christianity. This is as much as recognising and giving effect to the principle that a parent in India ceases to be a natural guardian on his or her change of religion as being one whose society the child should shun, and that the Court as *parens patrias* should interfere to displace the authority of such a parent over such a child. The whole principle is quite in accordance with the principles otherwise evolved by English Courts of Equity and Common law and only differs from them in laying down in no uncertain tone the rule that would be fittest for India. It should as a matter of fact make no difference in principle whether the original religion of the parent was Hinduism or Mahomedanism and his or her conversion was to Christianity or whether facts were *vice versa*. All the same the authority of the parent converted to Christianity should be displaced with severe impartiality by Indian Courts which should refuse, as the Court did refuse in *Reg v. Clarke* where the minor was ten years old as well as in *Skinner v. Orde* where she was sixteen, to inquire into or effectuate her present wishes. What the judge in *Saitrie's* case (I. L. B. 16 Bom. 330) did, amounted to displacing the authority of a non-convert parent in favour of strangers of another religion who had no *locus standi* with the minor other than that of having greater means, possibly good wishes, and a power to tempt a poor woman's illiterate and minor daughter with eloquence and inducements, while the natural guardian's sin was that she could earn but little and had not the means of paying a Counsel for prosecuting an appeal. The other difference was that her religion was non-Christian while that of those against whom she had to struggle were Christians, there being no case of a rival natural guardian having turned Christian. It was an irony of fate for the Lords of the Privy Council to have their decision used in this case as an authority for propositions quite the reverse of what they had laid down.

The question of preference where the rivals for guardianships are strangers need hardly detain us. It will be a mere question of facts and the only point for reminder will be that the claimant professing the minor's religion of birth ought to have a balance in his favour. The question presents some difficulty where father and mother being both alive, one of

them is a convert and the other is not. In *Ree v. Mannoville* (5 East 221) even the alien father of even an infant at the breast of the mother, an Englishwoman, was held to be entitled to its custody in preference to the mother unless the latter had evidence to show that it was the father's actual intention to remove the child to foreign country or unless she could impute to the father some motive injurious to the health or liberty of the child. He is held entitled to such preference even if the child is within the age of nurture: *Reg. v. Greenhill*, (4 A. & E. 624). On the other hand in *Ree v. Wilson* (4 A. & E. 645 n), an infant, in the custody of the mother, brought up by *habeas corpus* at the father's instance, was ordered to remain with the mother and the father's access to the child was ordered to be regulated by the Master. In *Reg. v. Clarke*, (7 El. & Bl. 186), the child of a deceased Protestant father was allowed to remain in the custody of a Roman Catholic mother who had been a guardian for nurture even though she intended to educate the child in her own persuasion. There have been good many cases in England where the Courts have allowed preponderance to the mother's right against the father's under varying circumstances including her being in a position on account of her faith to educate the child in the particular subdivision of Christianity to which the child had long been trained up and from which it was too late to wean the child into the father's faith: see *Thomas v. Roberts*, (3 De G. & S. 758); *Stourton v. Stourton* (26 L. J. Chan. 354); *Austin v. Austin* (34 Beav. 257). The marriages of Roman Catholics with Protestants have afforded scope in England for bringing into prominence the superiority of the father's right to train up the child in his religion, and the Courts, while admitting this as a rule, have given preference to the mother's right as well at times. Sub-religions forming different departments of a common religion and yet presenting such antagonistic rights as these two branches of Christianity have, no parallel in India. The only lesson that can be given by these instances to us is that where the father or the mother has been converted for years and years, the child's welfare may be presumed to lie in being kept with the parent with whom it has been allowed to pass the greater part of its time. The superiority of the father's so-called 'right' can have no place in a country where the child's welfare and safety must be presumed in its following either the religion of its birth or the religion to which one of its parents has allowed the other to bring it up for years and years. No two Indians marry when they are of different persuasions, and the only complication can arise from subsequent conversion and not from initial difference of religion. The complication can sensibly be met by dropping all talk of parental rights over children and considering

everything from the standpoint of the child's *welfare* as presented by judge-made principles of law in one of the above two forms.

Now that we have the Guardian and Wards Act of 1890 to regulate the appointment of guardians in all cases, it will be the pivot round which all discussions on these points will turn. But, as pointed out, its provisions only direct our attention to the questions which must be answered before appointing guardians and leave the answers to be gathered from other sources. Acts XXI of 1866 and IV of 1869, Hindu and Mahomedan Laws, and principles laid down by the Privy Council as well as by the Common law and Equity Courts of England form the sources from which these answers are to be gathered and adjusted to the needs and circumstances of the country in spite of the decisions of Indian Courts on Act XXI of 1850 which must be relegated to the category of unsound and unpractical pronouncements *ex cathedra*. Judging by the tests we have analysed and found sound in principles and suitable to India, the term 'natural guardian' must cease to be applied to a parent who has given up the creed to which his or her child was born whether we look at the way in which such parents are displaced from guardianship by English and Privy Council decisions, or whether we look to the various personal laws in force in India which allow no quarters to those who renounce it or to the conditions of the social structures which they control, or whether we look at the spirit displayed by legislation in the various Acts bearing on the subject. These Acts give a large and undefined amount of discretion to judges under the evident impression that they will prove equal to the task of exercising it upon sound and equitable principles suited to the welfare of the minors and to their religions, personal laws, and social conditions. We find anything but a reference to these principles in those decisions which make short work of the child's welfare and all other conditions by simply applying the inapplicable Act XXI of 1850 to the case and investing convert parents with *rights* of guardianship *jure naturae* over children whose own personal laws and *rights* are hardly disguised or held relevant or even supposed to exist. This presents a conspicuous contrast with the manner in which it did not occur either to the Privy Council, in *Skinner v. Orde*, decided in 1870, or to the lawyers before it, to solve their problem with an eye to the rights of the minor's mother as natural guardian under the personal law of her original persuasion being kept intact by Act XXI of 1850 so as to exclude the subversion of the personal laws of the child and of its right to confine the sole issue to a consideration of its own welfare and social conditions.

It would seem then that upon the authority of this case this Act ought to have nothing to do with such cases.

[To be continued.]

RECENT ENGLISH CASES.

* **GAMING**—*Place used for Betting—Bar of Public-house—Betting Act, (Vict. c. 119), s. 3.* The appellant, who was a bookmaker, was in the habit of frequenting the bar of an inn at certain hours for the purpose of carrying on a business of ready-money betting with persons resorting thereto, and the fact of his carrying on that business in the bar was known to those persons. He carried on the business there by the permission of the landlord, but he did not for the purposes of it occupy any specific portion of the bar:—*Held*, that the above facts amounted to a "use" of the bar by the appellant for the purposes of betting in contravention of s. 3 of the Betting Act, 1853. *TROMANS v. HODKINSON* (1903-1 K. B., 30).

MORTGAGE—*Consolidation—Bankruptcy—Several Mortgages on same Property—First Mortgage reserving Right of Consolidation—Third Mortgage including other Property—Claim to redeem third Mortgage only—Conveyancing and Law of Property Act, 1881 (44 & 45 Vict. c. 41), s. 17.* Three mortgages of the same property were granted by the same mortgagor to three different parties, the third mortgage also including other property. Only the first mortgage contained a clause reserving a right of consolidation. On the bankruptcy of the mortgagor, the second mortgagees took transfers of the first and third mortgages:—*Held*, that the trustee in bankruptcy could not redeem the third mortgage without also redeeming the first and second mortgages. *In re SALMON. Ex parte THE TRUSTEE* (1903, 1 K. B., 147).

PARTNERSHIP—*Principal and Agent—Scope of Authority—Tortious Act of one Partner—Liability of Firm—Bribing Servant to disclose Employer's Secrets—Partnership Act, 1890 (53 & 54 Vict. c. 39), s. 5.* Where it was in the course of the business of the defendants, a firm of grain merchants, which consisted of two partners, to obtain by legitimate means information in regard to contracts made or tendered for with brewers or with buyers of grain by competing firms, and one of the partners obtained such information by bribing a clerk of the plaintiff, a competitor in business, to break his contract of service by dishonestly and improperly communicating to him knowledge obtained in the course of the clerk's employment:—*Held*, that both the partners were responsible

in damages to the plaintiff for the action of one of them as aforesaid, on the ground that it was within the general scope of the authority given to him as a partner to conduct the business of the firm. *HAMLIN v. JOHN HOUSTON & Co.* (1903, 1 K. B., 81).

SALE OF GOODS—Negligence—Dangerous Goods—Knowledge of Vendor—Duty of Vendor to Purchaser—Warranty of Fitness—Sale of Goods Act, 1893 (56 & 57 Vict. c. 71), s. 14. Where the vendor of a tin containing disinfectant powder knew that it was likely to cause danger to a person opening it, unless special care was taken, and the danger was not such as presumably would be known to or appreciable by the purchaser, unless warned of it:—*Held*, that, independently of any warranty, there was cast upon the vendor a duty to warn the purchaser of the danger. Where one of the rules of a co-operative society stated that no warranties were given with goods sold by the society, except on the written authority of one of the managing directors or the assistant manager: *Query*, whether the rule had the effect of excluding the implied warranty that an article sold for a particular purpose is fit for that purpose. *CLARKE AND WIFE v. ARMY AND NAVY CO-OPERATIVE SOCIETY, LIMITED* (1903, 1 K. B., 155).

WILL—Class—“My own Nephew and Nieces”—Half-blood—Husband’s Nephew described as “my Nephew”—Great-niece described as “my Nieces.” The question whether a husband’s nephew described in a will as “my nephew” and a great-niece described as “my niece” are entitled to share in a gift to “my own nephews and nieces” depends in every case on the particular will and the evidence, no hard and fast rule in the affirmative being laid down by *In re Jodrell*, (1890) 44 Ch. D. 590: [1891] A. C. 304, or in the negative by *Smith v. Lidiard*, (1857) 3 K. & J. 252, *Wells v. Wells* (1874) L. R. 18 Eq. 504, or *Merrill v. Morton*, (1881) 17 Ch. D. 382. Nephews and nieces of the half-blood are prima facie entitled to share in such a gift. *In re Coxens Mills v. Wilson* (1908, 1 Ch., 138).

GLEANNING.

Fusion of Law and Equity.

LORD Selborne’s Chancellorship was signalized by that great measure of legal reform, the Judicature Act. Till then, to use Hale’s phrase, “what God had joined together”—Common Law and equity—“man had put asunder;” sundered so widely that some—and Lord Eldon among them—believed the separation to be part of the eternal fitness of things. Lord Bowen has well described the state of things; the principles.

on which the two jurisdictions administered justice were unlike. The remedies they afforded to the suitor were different; their procedure was irreconcilable. They applied diverse rules of right and wrong to the same matters. The common law treated as untenable claims and defenses which equity allowed, and one side of Westminster Hall gave judgment which the other side restrained a successful party from enforcing. The law had always cherished as its central principle the idea that all questions of fact could best be decided by a jury. Except in cases relating to the possession of land, the relief it gave took, as a rule, the shape of money compensation in the nature rather of debt or damages. The procedure of the Court of chancery, on the other hand, was little adapted for the determination of controverted issues of fact, and it was constantly compelled to have recourse for that purpose to the assistance of a Court of law. The Common law had no jurisdiction to prevent a threatened injury; could issue no injunctions to hinder it; was incompetent to preserve property intact until the litigation which involved the right to it was decided; had no power of compelling litigants to disclose what documents in their possession threw a light upon the dispute, or to answer interrogatories before the trial. In all such cases the suitor was driven into equity to assist him in the prosecution of a legal claim. The Court of chancery in its turn sent parties to the law courts wherever a legal right was to be established, when a decision on the construction of an Act of Parliament was to be obtained, a mercantile contract interpreted, a point of commercial law discussed. Suits in chancery were lost if it turned out at the hearing that the plaintiff, instead of filing his bill in equity, might have had redress in a law court; just as plaintiffs were nonsuited at law because they should have rather sued in equity, or because some partnership or trust appeared unexpectedly on the evidence when all was ripe for judgment. Thus the bewildered litigant was driven backwards and forwards, from law to equity, from equity to law. The conflict between the two systems and their respective modes of redress was one which, if it had not been unpopularity supposed to derive a sanction from the wisdom of our forefathers, might well have been deemed by an impartial observer to be expressly devised for the purpose of producing delay, uncertainty, and untold expense.

To Lord Selborne belongs mainly the credit of ending this anomalous, not to say scandalous, state of things. The division of labour still remains: special subjects are still dealt with by particular branches of the High Court—chancery, admiralty, probate, commercial, bankruptcy; but—and this is the essence of the reform—the principles upon which

justice is administered in all these branches are now the same. Common law and chancery are no longer, in King James' quaint phrase "crossing and cuffing one another," but co-operate to an end. This union and consolidation of our legal system in one Supreme Court of judicature was fitly symbolized by the bringing-together of the different Courts and offices in one splendid edifice—the Royal Courts of justice—in the year 1882. August was the ceremony of opening. The Queen herself was there with the flower of her realm, and Lord Selborne's address (enshrined in the law reports for 1882) was worthy of the occasion. Apropos of this address there is a story. It was being penned in a committee of the judges, and, with the humility of true greatness, the wearers of the ermine had formulated the phrase, "Conscious as we are of our shortcomings." "Why not," suggested Lord Bowen, "say, 'Conscious as we are of each other's shortcomings!'"—*Law Times*.

REVIEW.

The Annual Digest, 1902. By JOHN MEWS, Barrister-at-law. LONDON: Sweet and Maxwell, Ltd. 3 Chancery Lane, W.C. 1903. Roy. 8vo. Pages xvi and 374. Price 15s.

THIS is an annual supplement to the monumental Digest of English Case Law, which was launched into existence in 1898, mainly through the indefatigable energy and untiring patience of Mr. John Mews. One great advantage which this annual digest possesses is that in arrangement it is identical with the larger Digest: hence, lawyers using the latter can scarcely dispense with these annual supplements. Like its predecessors, this handy volume is prepared with an amount of care and industry: and we strongly recommend it to our readers.

Bombay Law Reporter.

April, 1903.

CONFLICT OF LAWS BETWEEN • CONVERTS AND NON-CONVERTS IN INDIA.

GOVURDEANRAM MADHAVRAM TRIPATHI, B. A., LL. B.

VAKIL, HIGH COURT.

[concluded from p. 61].

CHAPTER VI.

ADOPTION.

THE decision of two learned Judges of the Bombay High Court in I. L. R. 25 Bcm. 552 staggers one's common sense when it goes the length of giving this small Act the still more extended operation of enabling Mahomedan fathers to give their Hindu sons in adoption. After referring to the rulings which lay down that the convert from Hinduism is by virtue of Act XXI of 1850 not divested of his inherent right as Hindu father to the custody of his children "*not only as guardian by nature but by nature*" and after observing that adoption may be regarded as a civil transaction as well as a religious ceremonial, they feel that the question before them is narrowed down to this: "If the father is not civilly dead, if he is still the guardian of his son, why should he not be able to exercise his volition and sanction his son being given in adoption according to the Hindu religion? The son is still a Hindu; he is one who may be taken in adoption. We see no reason why the adoption should be treated as invalid." They also pointed to the circumstance that the son being a Rajput, no Datta Homam was necessary. They also relied upon the principle that a father may delegate his authority to give in adoption.

It is not proposed to enter into a detailed discussion of these points. We have tried to reach and grasp some of the right principles having a bearing on such cases. We shall now content ourselves with simply showing how their right application refutes the propositions enunciated

in the above decision and with referring to some additional points also to meet the peculiarities of the case.

Act XXI of 1850 is quite inapplicable to so called "rights" of guardianship, the word "rights" in the Act referring to quite a different class of rights.

The right of giving in adoption is not a legal consequence of or corollary from the possession of the status of a 'natural guardian'. It does not belong to non-Hindu parents but is the special creation of Hindu law and can only be claimed by a Hindu parent whose acceptance of Hinduism and Hindu law raises a legal presumption of his ability to look after the welfare of his Hindu child with the motives of a Hindu parent in giving the child in adoption. That presumption is conclusive if he is a Hindu but does not arise at all if he never was a Hindu or has ceased to be a Hindu. The right of a father to the custody of his child may or may not belong to him "by natural law or by nature," but the right to give away the son is certainly not one which ever was conceived to flow from that 'natural' fatherhood which the African savage and the civilized Christian claim equally with the Hindu. This special creation of Hindu law has nothing to do with the civil death or life of a man as a man or with the guardianship of any father as father whether that guardianship flow from nature or her so called law and Mr. Justice Candy's question "why should he not be able to exercise his volition and sanction his son being given in adoption according to the Hindu religion?" "If he be not civilly dead or if he still be the guardian of his son," can most promptly and logically be answered with the reply "Because the conclusion you draw from the premises implied by these *ifs* does not follow from them." We may assume that Act XXI of 1850 does continue to convert the right of a father "by nature and natural law" whatever that may mean, but it certainly contains not a syllable to warrant the conclusion that it also continues to him the "artificial or conventional" right of a Hindu father to make a gift of his son to another Hindu in the face of all modern civilization and in the teeth of all laws against the sales and gifts of sons. A man may be civilly alive and may still be the guardian of his son and yet, if he be a convert, he will not be able to enforce his conjugal rights against his non-convert wife nor, by parity of reasoning, to feed his Hindu son with his hands and to spoil his caste or to make a gift of him by way of adoption. Adoption is a legal fiction open to Hindus and none else. The right to give in adoption is not "a right to which but for the operation of the Hindu law a convert Hindu would be entitled," if he may use the language of the

model Bengal Act referred to in the preamble of Act XXI of 1850, nor is the cessation of such a right "inflicted" as "a forfeiture of right" by Hindu law so as to call forth the activity of the operative section of this general law. The Hindu law only gives a special privilege of giving and taking in adoption to Hindu fathers, and the privilege fails on their renouncing the religion, not because the Hindu law "inflicts" the failure as a punishment for the renunciation, but because the convert by his own act makes this law breathe its last so far as he is concerned and there is no other law in the vast vast world to give him that privilege. It is a mere case of an effect failing with the failure of the cause and not of the "indiction" from which only the Act proposes to save him.

The argument that the son is a Hindu and may be taken in adoption is no doubt correct so far as it goes. With the recent tendency, of decided but doubtful wisdom, to treat adoption a civil matter, this is not the place to quarrel. We may not for a moment object to the question of ceremonies being dispensed with legally at a Rajput adoption, though Rajputs are neither Sudras nor Jains. We may also wink, though with irony, at the decided idea that a Mahomedan may delegate the power of giving in adoption for reasons which amount to a spiting of Hindu religion and are other than those contemplated by Hindu law. The learned judges seem to have been anxious to give us a peep into their inclinations on most of these points without having to decide them. But we cannot certainly accept with cordial concurrence their announcement that it was sufficient for their purposes that the son was a Hindu and could be adopted. Hindu law makes it essential that not only the taking in adoption but even the giving in adoption must be made with certain motives. The fact that our Courts have recently been considering the motives of widows taking in adoption as being inscrutable or unnecessary to scrutinize is consistent with our forward movement. The motives of the giver are never inquired into because the law presumes them to be Hindu-like as the fathers giving away their dear sons could not be presumed to have unfather-like motives. But there ought to be a limit to such presumptions, and that limit is probably reached when a Hindu brain undergoes metamorphosis into a Mahomedan or Christian brain and gives up the home, the caste, the society, and the religion to which he was born and in which he has grown old enough to be the father of a son. There are enough materials in Hindu law to show what-like the never discussed motives of Hindu fathers are when they part with their sons and there are also usually circumstances connected with changes of religion which are sufficiently suggestive of the kind of motives which might sway the breasts of convert

parents. Nobody can look upon the difference in the motives of the two sets of fathers with a light heart, and judges rushing into startling enunciations of law can ill afford to overlook such differences when weighing the far reaching effects of the law Providence calls upon them to lay down.

A son may be given in adoption while he is a minor or an adult. If he be an adult, his consent is necessary to his being given away in adoption and it is equally essential that he should not be an orphan but that he must have a father or a mother alive to give him away. "The son, though a man's own, is not a chattel and is not to be given away without his own consent and the rule of Bauddhayana which exacts this in the case of a Kritrima adoption is equally applicable to any case where the person adopted is old enough to have a will and judgment of his own. Which he has no discrimination, his father may part with him but only, according to the religious law, under some great exigency. Parents are to bestow their sons with anxious care on one to whom he has an affectionate feeling." West and Buhler, pp. 931-932. "The Dattaka Mimansa quotes Manu and Katyayana to prove that a gift of a son may be made only in a season of distress. In famine a son may be even given or sold, and the stress of necessity justifies a widow in thus parting with her son. . . . A gift made by a competent parent is universally admitted to be effectual, whether made under the pressure of want or not. Very few adoptions are made from pauper families, and the gifts or sales made during famines are not usually attended with any ceremonies of adoption." West and Buhler pp. 1074-1075. These remarks are useful to show what at one time in the history of Hindu law were the motives of gift and what now are not necessarily the motives. The Mayukha puts the following formula or declaration in the mouth of the father giving in adoption: "I am going to give my son in adoption to create [between my son and his adopter] those various reciprocal obligations which arise from the various relations, such as that of father and son [at present] existing between me and the like on the one hand, and this [my son] on the other." Mandlik's Hindu law p. 64. The adopting father responds in terms that remind one of counterparts of written agreement. There are differences of opinion and practice in different parts of India as to the mother's right to give in adoption during the father's life and after it: see West and Buhler pp. 1076-1080. All schools of Hindu law are unanimous that an orphan, however old in years, cannot give himself in adoption, that others than parents can never give away an orphan in adoption, and that.

the son's consent to his being given away is essential if he be an adult. The indispensableness of these consents is meant to supply safeguards for ensuring the adoption being made with right and adequate motives. We do find in our Courts and cases questions raised as to the motives of widows taking in adoption, though under the new rulings these, as well as the motives of father taking in adoption, will be irrelevant in our Presidency. The motives of givers have always been irrelevant. But the motives of both are highly relevant to society when convert fathers claim to give away their sons or convert people claim to take sons in adoption. There is no saying that another set of judges will not gravely hold to-morrow that the right of a childless Hindu converted to Mahomedanism to take in adoption a Hindu son is saved from forfeiture by Act XXI of 1850 if only the adoption is made on conditions securing proper provisions for continuing to the son his Hindu mode of life, conditional adoptions being valid at law. The question is whether motives so irrelevant usually at law can become relevant in these cases simply because they are highly relevant to society. If they can, what will be their effect?

The view taken by Candy and Whitworth JJ., in the Bombay case under consideration, is the natural result of the avowed predisposition to view adoption as a "civil transaction" and the view of our Full Bench that motives of widows taking in adoption are irrelevant is also the natural outcome of a tacit predisposition in the same direction. By calling adoption a "civil transaction" only, they obviously mean a "financial transaction" in which the only question is whether Z, the son of the natural father X is given away to the adoptive father Y in order that Z may inherit Y's estate instead of X's. This view is supported by Sir Henry Maine's theory in his work on Ancient Law that adoption is only substitute for testaments. The view is of course correct so far as it goes. But in India at least this is not the whole of the truth about adoption, and the rest or the unknown part of the truth is not less important than this known part of the truth and is perhaps even more important in the eyes of the people. The quotations from West and Buhler and Mandlik's translation of Mayukha are given above to indicate what this unknown or rather unrecognized and neglected part of the truth is. As will be shown further on, the social, domestic, and religious aspects of the matter do yet survive as living parts of this truth.

European Judges of old used to consider religious motives more or less essential, because Hindu society then did usually entertain such motives. This society now includes a minority in the shape of educated natives who do adopt sons without showing any necessary partiality for

religion or religious motives. Western ideas are permeating so far and yet old modes of thought are so far from making a complete stampede from the arena that mixed motives with varying shades of religious ones have become the order of the day, and it is a gain to common sense justice that judges should declare themselves incompetent to analyse such mixtures and draw the line between what is religious and what is secular. The modern refusal to admit the relevancy of motives is only a judicial confession, and a right confession so far as it goes, of this incompetency. There is soundness in this judge-made law for Hindus. That law being paraphrased amounts to the creation of the conclusive presumption that the motive in every adoption shall be irrebuttably presumed to be in accordance with the requirements of Hindu law.

As already noted the soundness of this presumption of the actual existence of right and adequate motives is safeguarded by requiring that no orphan can be given or received in adoption, that no adult son can be so given or received without his own consent, that he should be given in adoption by a living parent and usually the father is to be that parent, and that there must be a living parent as a consenting party where he or she is allowed under adequate circumstances to delegate his or her authority. The question is whether this safeguard is adequately secured by the consent of a convert parent and whether the rest of this parent's functions can be legitimately delegated on the ground that the parent has become by change of religion disqualified for those functions. If the safeguard is not adequately secured or the delegation is not authorized under the circumstances, then the legal presumption of proper motives cannot arise and judges could only be acting upon a fiction by legalizing a baseless presumption.

The learned Judges in the Bombay case rely upon Mr. Mayne's opinion that there could be delegation of the act of giving "where the necessary sanction has been given by an authorized person", as then "the physical act of giving away may be delegated to another." At p. 257 of 8 Bomb. H. C. R., "the object of corporeal giving and receiving" is said to be "to give due publicity." We may assume the correctness of this for the moment. It still leaves it open to us to pause before accepting as proved the propositions that a convert parent is "authorized" to give the "sanction" and that delegation of his authority is permitted not simply "with the object of giving publicity" but also with the other equally obvious object of supplying the convert's want of social and religious capacity to give in adoption with unpolluted head, heart, and

hands. Whether there be authority or not for the limited powers of delegation for the ordinary purpose referred to, there is certainly no authority for these extended propositions essential to complete the *scritas* of our Bombay decision. The delegation in the case in 8 Bomb. H. C. R. was made to an uncle because the maker of the gift was "unwell" and temporarily disabled. That is a far different thing from the parent's being permanently disqualified and disabled to take part in at least the religious covenants under religious sanction as quoted above from the *Mayukha*. There is thus not the faintest analogy between the delegations in the cases from 8 Bomb. H. C. R. and L. L. R. 25 Bombay.

Hindu parents are not allowed the right to give in adoption simply because they are "natural guardians." The right of the mother to "natural guardianship" is as good as the father's, and yet her right to give and take in adoption is only by delegation from the father, and it is this theory of her delegated powers that is variously interpreted in various parts of India and is accountable for the differences, already noted, in the various schools about her right to give and take. Even the father's right to give is limited in various ways. As noted in West and Buhler, pp. 1075-76, footnote (f), "The limitation of the right of disposal over children to parents originated no doubt in religious feeling, but it has probably been maintained in a measure at least by a sense of its being a necessary *safeguard* for the children. *Their interests* were least likely to be sacrificed by their parents." Then continues the note, "The removal of the child from the class of mere chattels is important with respect to the illegality of giving in adoption subject to terms injurious to the child as a son in the family of adoption. Such terms the Shastris have in some instances pronounced void as will be seen in the next section". At pp. 1101 *et seq.* of that work will found the necessary part of this "next section". This portion will show how difficult and delicate a business it is for even parents to settle the terms of adoption at times even in financial matters and how Courts will exercise supervision over such terms even where the son is an adult and has consented to the terms. As pointed out by these learned authors in the words of Hindu lawyers the principles to be applied in the course of such supervision "are subject to the control of the Court as representing the Sovereign" according to Hindu principles in *protecting the weak and helpless*": West and Buhler p. 1104. This jurisdiction of the Court assumes that *the whole object* of giving in adoption so far as the gift is concerned is *the welfare of the son* given, and it is entrusted to the father only as being the best person fitted by natural affection and sound judgment to appreciate the effect of the gift and even *his* appreciation is

liable to be revised by the Sovereign. Whether it is the father or the mother that gives, he or she is only *permitted* to do so as being the best trustee of the interests and welfare of the child, and natural guardianship is only one of the tests by which the Court as *parens patrias* may judge the *prima facie* fitness of the parent to look after the propriety of disposing of the *cestui que trust* in the interests of the child itself. This does not exclude the application of other tests by the Court to the fitness of the parent to perform this delicate and difficult function and to limit the authority of parents if they accept terms detrimental to the best interests of their sons, or if they are insane, or if they could not or would not do all that the personal law of the child requires them to do to safeguard the welfare of the child. This sort of limitation upon parental rights must from the very nature of the case arise more or less in the case of convert parents and affect any claim that may be paraded on their behalf on the ground of their so called natural guardianship.

We have now the following propositions or principles before us. (1). Whether motives of those giving in adoption be relevant or not, the law secures their propriety and adequacy by requiring the consents of parents, not as mere guardians, but as trustees of the welfare of the boy to be given away. (2). Where the full quality and quantity of such consent is so secured, the law will presume such motives. (3). The Court, as *parens patrias*, will inquire into the conditions under which and the terms upon which consent has been given at least so far as the results of adoption as a civil transaction are concerned. (4). Courts will in these matters limit the rights of parents and set right such errors as they may have been guilty of in the performance of their trusts. (5). It is presumed that parents bestowing their sons do so "with anxious care" on one to whom the son to be given "has an affectionate feeling," and the law absolutely refuses to draw this presumption in favour of any one not being the actual parent of the child. (6). As the consent of the son, if adult, is to be secured to his adoption, the consent of the parents, where he is a minor, is presumed to be also a substitute for the consent, or, in other words, it is expected that the parent's consent is given upon such grounds that the son, when adult, may be safely expected to approve of it.

Conversion in England from the Protestant to the Roman faith affects no social change and but very small legal change. Here in India when a Hindu father becomes a Mahomedan or Christian, he severs himself from the society of his son and all that his son holds dear in society, religion, life and law. A vast gulf dawns into existence between the father's and son's standards of the son's welfare in every possible direction the moment the

father becomes a convert. We can no longer presume that the consent of such a father to the adoption would satisfy the requirements of the sixth of the above propositions and the presumption would strongly be that the convert father would, by the very constitution of his brain, dispose of the son in a direction which to the son may be most unwelcome on his attaining maturity and even during his minority. On account of his own intrinsic fall from Hinduism and its views of practical and ideal welfare, a father like this is one who has placed himself in a position by force of which he has rendered himself mentally and morally incapable of seeing whether his disposal would secure to his son that welfare which the non-convert son would prize. Very probably the disposal would in many respects be one for which the son, when of age, would curse his father and the law that placed him at the mercy of that father. An adoption to an adopted son means far more than the change of his pecuniary lot. It has been aptly compared by a Hindu writer with the disposal of a child-daughter in marriage. It is something more than that. It places him under the tutelage of a conventional father far different from the husband of the child-wife in reciprocity of affections and worldly needs. He has to enter as a stranger the house of a stranger and be dependant upon for his life, his liberties, his education, his worldly career, his marriage and married state, his religion, and everything. All this means far more than the simple needs of a Hindu wife in the ordinary run of life. The child-wife goes to a roof where at least the husband wants him for his worldly happiness. The adopted son can hardly be wanted until he can earn and place his earnings at the disposal of a so called father. He is a slave if he is not welcome as a beloved son. It is therefore that the Mayukha, as in Mr. Maudlik's translation already quoted above, makes the giving father declare that the object of his giving the son in adoption is "to create [Between my son and his adopter] those various reciprocal obligations which arise from the various relations such as that of father and son [at present] existing between me and the like (i. e., between me and the rest of my family) on the one hand and this [my son] on the other". This is a terse and pithy summing up of the various points which the natural father is expected to have weighed within his mind as constituting the keystone of his son's welfare in the stranger's family, and he is expected to have assured himself and bargained that the son's welfare as coming within the meaning of these words shall be promised and guaranteed to his son by the adopter. He is expected to have weighed the ability and the circumstances of the adopter and his family into whose hands he is to place his child at a tender age. And, he

is expected to have so weighed, so concluded, and so bargained, before bestowing his son, as Messrs. West and Buhler put it in words not their own, "*with anxious care on one to whom he (the son) has an affectionate feeling.*" And this is what the solemn declaration prescribed for the giver implies and this is that to which the adoptive father has to respond with an equally solemn declaration before the son is adopted. To use the language of our Contract Act this is the Proposal and this its Acceptance at an adoption ceremony. Agni or fire at the Datta Homam is only a sacred witness to these declarations, and whether modern judges call it a legal necessity of the transaction or not, the two declarations by the giving and receiving fathers can no more be dispensed with at an adoption than can the solemn oath or declaration tendered by Courts to witnesses before they open their lips. The questions are whether a convert father is in any way qualified to make this declaration and whether he can be permitted to make it vicariously.

Even Farran J. who as Chief Justice ruled a widow's motives for taking in adoption out of order, admitted the necessity of "giving and taking" under the Hindu Law, such as is described by the Judicial Committee at p. 56 in *Mahoshaya Shoshinath Ghose v. Srimate Krishna Sundari* (L. R. 7 I. A., 50), as being essential to adoption by all classes of Hindus. Their Lordships of the Privy Council in that case laid down that "according to Hindu usage which the Courts should accept as governing the law, the giving and taking in adoption ought to take place by the father handing over the child to the adoptive mother, and the adoptive mother declaring that she accepts the child in adoption." This ruling has at times been described as if it confined itself to making "corporeal delivery of the child" both necessary and sufficient for adoption. In *Gorindayyar v. Dorasami* (L. R. 11 Mad. 6), the Full Bench made matters clear by interpreting the Privy Council to mean that not even an overt act like the passing of a registered deed of adoption was enough "but that there must be corporeal delivery of the child by a person competent to give, to a person competent to take, accompanied by the declaration—on the one side, I give the child in adoption, and on the other, I take the child in adoption." The giving and taking are not mere physical acts, not mere handing over of the boy's corporeal frame, but of doing so with the deliberate declarations referred to on either side, and the persons doing so must be competent to do it.

It will not be contended that giving publicity to the affair was the only object of this affair. The vital part of the affair is the declaration which is meant to bring home to the minds of the parties all that is included

in the formula prescribed by the Mayukha with the solemn religious sanction and promise contemplated by the words. The corporeal delivery is meant to bring to the most ignorant parties the meaning of what they are doing. The whole is a sacred and solemn act implying that the parties are not only competent to enter into the sacred act but that they have thought of its significance and that they guarantee *with religious sanction* the welfare of the child to the whole extent implied by the Mayukha.

Neither a Mahomedan nor a Christian father believes in the sanctions of the Hindu religion. The religious character of the transaction which makes X's son the son of Y can to such a convert mean no more than a farce. To him the registered deed of adoption which the Privy Council held insufficient, would be all in all if it can have legal operation. Polluted for ever in mind and body, in the eye of the Hindu law, he is as much disqualified beyond cure to touch and physically deliver his son or to utter the religious formula as he is to enter into a Hindu marriage. How can such a man delegate to another the function of making a religious declaration which he is not competent to make for himself and by which no amount of religious swearing by the delegate will bind this scoffer? What the religion of none of the parties will qualify him for doing, cannot be done by him by finding out a delegate.

Taking the matter from a civil and non-religious standpoint, what relations are presumable between a convert from Hinduism and his family? He becomes unfit to live in union with that family, with his wife, and with his son. The Privy Council's pronouncement in Skinner's case that a Mahomedan mother's roof is not a fit place for her Christian infant for the purposes of even its custody, is *a fortiori* an authority for holding that a convert parent is not a fit person to hand over the custody and the fortunes of his Hindu son to a stranger. To hold otherwise would be to enable a convert parent to transfer the custody of his child where, if we are right, the law would not give the custody to himself, and in doing so he would be doing it by a process which would put it out of the power of the *parans patrias* to question his proceedings.

Adoption means the disinheriting of one's own son in order to enable him to inherit elsewhere. There would be peculiar temptations to induce converts to disinherit their non-convert sons; and yet if he can give in adoption, the Court cannot question what the son has lost and the father has gained.

As regards the social and domestic welfare of the son, so pointedly referred to by the Mayukha declaration, there is every presumption in

fact that the non-convert residue of the son's family is a better home for the son than the convert's and that the convert will only aspire to transfer him to a home where the son will be more or less under his control and the home will be more or less suitable to the convert's own choice. Surely the Mayukha did not mean that this should be the result of the declaration and adoption prescribed by it.

People do not necessarily become converts from sincere change of convictions. Moreover, the circumstances attending a conversion generally savour of bitterness of feelings and are associated with reciprocal hatred. A convert is not likely in these circumstances to devote any such "anxious care" for his non-convert son's disposal as our fifth proposition, above mentioned, implies, nor is such a father likely to transfer the son to one "to whom that son has an affectionate feeling" as mentioned in that same proposition. We would in vain search in such cases for even a fraction of that full quality and quantity of consent which alone, as pointed out in our first and second propositions, are necessary to secure the effectuation of the adoption with right and adequate motives and under a full sense in the parent of his or her responsibility as trustee for the welfare of the child from a Hindu parent's standpoint.

It is hoped sufficient reasons have been given above in reply to the question raised in the Bombay decision why a convert father should not be able to exercise his volition and sanction his son being given in adoption. The right of giving in adoption is larger than that of the custody of one's child for the purposes of which a convert parent's natural guardianship is often displaced both here and in England.

Adoption is a fiction in favour of which, neither Act XXI of 1850, nor the personal law of any one but a Hindu and of any convert from Hindunism, enables any father or mother to exercise his volition. The argument of Candy and Whitworth JJ. amounting to the proposition that when a son is a Hindu and an adopter is a Hindu, a father of whatsoever religious persuasions can give the former in adoption to the latter overlooks the fact that there is a vast gulf between the motives which alone enable a father to give in adoption under the Hindu law and the motives which in such a transaction can ever possibly be harboured by the breast of one not a Hindu father. The general nature of such motives is well defined by the very declaration prescribed for the giver and taker and safeguarded by making it essential that the adoption should be consented to by particular persons in whose favour alone can be made the presumption that nothing but the future financial, social, domestic, educational and religious welfare of the child has been the sole motive prompting them to transfer the fortunes

of a son, usually a minor, from family of his birth into the family of a stranger. Though Courts do not go into the question of these motives, they do consider and annul any wrong conditions at adoptions and do so as representing the *parens patrias* to protect the son as being "the weak and the helpless" object of its protection. A convert from Hinduism can never have the breast that can harbour the motives which are implied in the declaration to be made when giving in adoption and his mind is so irretrievably apostate and his body is so incurably polluted that he is utterly disqualified for the most elementary ceremony and the significant and profound solemnity of "the giving and taking" in adoption and of making the declaration held by the Judicial Committee and by the highest Courts of all Presidencies as indispensable to the validity of adoptions even in the lowest caste. To allow such a convert to exercise his volition in giving his Hindu son in adoption or to delegate and sanction the giving is not only beyond the contemplation of any law but can only be subversive of the very principle of the welfare of the adopted son and might often mean his secular and spiritual ruin.

The decision which committed the error of overlooking principles and conditions of such paramount importance can only be attributed to the blind which our current method of following precedents without analyzing them and of doing so in the interests of uniformity holds before the best minds. Uniformity is a good ideal for judges. But uniformity should be sought in the matter of cardinal principles with far-reaching results and not in the direction of so called logical deductions from words without images; nor need the desire for uniformity be so intense as to shut up all avenues to such original thought as the public is entitled to claim the benefit of from superior minds like those of the eminent judges who had to decide the Bombay case in question.

RECENT ENGLISH CASES.

ARCHITECT—Damages—Negligence of Architect in preparing Plans—Plans not used—Nominal Damages. The plaintiffs employed the defendant to prepare plans for a building to be erected on a site belonging to them. The defendant neglected to measure the site, and, acting on information which was unauthorized by the plaintiffs, prepared plans on the assumption that the site was smaller than it was in fact. The plaintiffs, having paid the defendant for the plans, were unable to raise funds to build on the site, and ultimately parted with it, and then discovered the

error in the plans. In an action to recover the money paid for the plan on the ground of a total failure of consideration, or, in the alternative, for damages for negligence:—*Held*, that there had not been a total failure of consideration, but that as the defendant had been negligent the plaintiffs were entitled to damages, although, as they had sustained no loss from his negligence, those damages would be only nominal. *COLUMBUS COMPANY v. CLOWES* (1903, 1 K. B., 244).

• AUCTIONEER—*Advertising property for sale—Action by person claiming to be owner—Slander of title—Auctioneer cast in damages—Liability of principal.* The defendants instructed the plaintiff, an auctioneer, carrying on business in Paris, to advertise for sale a mare which they represented to him was a thoroughbred mare entered and described in the English Stud Book under the name of Pentecost. The plaintiff accordingly advertised the mare for sale as so named and described. A Frenchman, the owner of a thoroughbred mare also called Pentecost, brought an action in France against the plaintiff, alleging that he had suffered damage through the defendants' mare being advertised for sale under that name, and recovered damages. In an action by the plaintiff against the defendants for an indemnity, it was found as a fact that the representation made by the defendants as to the identity of their mare was true:—*Held*, that the defendants were not liable, the damages recovered from the plaintiff not being due to any wrongful act on their part. *HALBRONN v. INTERNATIONAL HORSE AGENCY AND EXCHANGE, LIMITED* (1903, 1 K. B., 270).

REVIEWS.

The Bacon-Shakespeare Controversy: a judicial summing up. By the Right Hon. Sir JAMES PLAISTEN WILDE, Baron PENZANCE. LONDON: Sampson, Low, Marston and Company, Limited, St. Dunstan's House, Fetter Lane, Fleet Street, E. C. 1902. Demi 8 vo. Pages xiii and 200.

THE suggestion that the Shakespeare plays were in fact written by Francis Bacon, was first made in America: and it was Mr. W. H. Smith, who introduced it into England. Since then, the question is discussed greatly in England and America and both the sides of the question are combated by writers of acknowledged merit. About the year 1887, Mr. Ignatius Donnelly re-kindled the controversy, by the publication of his two volumes entitled, "The Great Cryptogram"—a book written with "a marvellous expenditure of patient and most ingenious labour." In England, the latest addition to this literature is Mrs. Gallup's exposition of the bilateral

cipher, supposed to exist in the folio of 1623. Mrs. Gallup's theory has met with a qualified endorsement from Mr. Mallock, in the "Fortnightly Review," and has elicited these humorous lines:

Ah me! what a tragic imbroglio
Produced by a famous first folio
Americans swear,
That a cipher lies there
To knock England's Bard rowley-powley O.
Uprises a Buddhist named Sinnett.
To hail the swan's death warrant in it
And an ex Oxford wit,
Named Mallock, is hit;
And perverses arrive every minute.
Yst Mr. Biographer Lee,
In certain as certain can be;
No mystery lurks,
In Shakespearian works:
"A cipher? All moonshine!" says he.

And we
We're quite in accordance with Lee.

But, the books upon the subject, most able as they are, are too long and elaborate to attract a very large class of readers. To Lord Penzance, whom we remember as a Baron of the Exchequer, belongs the credit of putting together striking facts and materials in a much shorter form—very much after the fashion of a judicial summing up—so as to exhibit in a more attractive light the arguments upon which the Baconians think themselves justified in questioning so fixed and venerable a belief as to the authorship of Shakespearian plays. The question whether Bacon was the author of the plays is treated as subordinate and subsidiary and Lord Penzance does not express any opinion thereon: he confines his attention to the single question whether or not Shakespeare was the author of the plays published by Heminge and Condell in the first folio of 1623. The subject of any other writings by Shakespeare or by others in his name, is thus left as matter for further consideration; since the enquiry whether Bacon was the author of all or any of the works hitherto attributed to Shakespeare is altogether unprofitable until the jury of the intelligent and educated world are satisfied that Shakespeare was not. The noble Lord has taken a calm and judicial view of a question surrounded by many difficulties and accentuated by lapse of time and by deficiency of accurate and complete information: and one feels struck at the serried array of facts; the clearness of the deductions and the simple yet attractive method in which the views are formulated.

An epitome of useful information relating to Trade-Marks, Letters Patent, Designs, Copyright and the use of the Royal Arms. Published by T. B. BROWN, Limited, 168 Queen Victoria Street, London, E.C. 1903 Demi 8vo. Pages viii and 70. Price 2s. 6d.

THIS little book contains a good deal of information which a person who has to register trade-marks, designs or copyright or who has to secure letters patent for an invention, ought to know. It thus bears upon the practical phase of an important branch of law. Messrs T. B. Brown Limited, the trade-mark, design and copyright agents and letters patent experts, have done well in presenting their experience in a neat form.

A Lawyer's Idle Hours. By C. AUGUSTUS HAVILAND. Published by the Author, 982 Fulton Street, Brooklyn, New York (U. S. A.). Second Edition. 1902. Crown 8 vo. Pages 177. Price \$ 1.

WHILE Blackstone and Coke bade adieu to the writing of poetry at the time of taking to law, Mr. Augustus Haviland, a prominent figure of the Brooklyn Bar, devoted his leisure hours to the pleasant task of writing verses. These verses are based on topics that attracted his attention during half-a-century of busy life. They were when composed printed under the non-de-plume of "Frank Myrtle," and are here collected in a handy volume. Mr. Haviland is now enjoying the quiet evening of a well-spent life, and it will be a satisfaction to him to learn that the verses with which he occupied, what he terms his "idle hours," will serve to delight the "idle hours" of many lawyers to whose lot are ascribed plenty of such hours, at any rate in the commencement of their career.

The Provincial Small Cause Court Act (IX of 1887). By GAYA PRASAD, B. A., Vakil High Court. BENARES: Tara Printing Works. 1903. Demi 8vo. Pages xii and 91. Price Re. 1.

THE Provincial Small Cause Court Act has, so far as we are aware, for the first time received a satisfactory annotation. The commentary is brought upto date and is subdivided under appropriate headings. The Statement of Objects and Reasons and the Report of the Select Committee are reproduced in the appendix. We have found this neatly printed little book prepared with care and industry and we are sure it will be welcomed by the profession.

Bombay Law Reporter.

June, 1903.

RELIEF AGAINST PENALTIES.

TO an observing eye, Society like Earth resolves itself into several strata; the one above is more powerful and is able to keep down the lower one and the topmost is the most influential of all, and the few at the top practically govern the Society. It is not possible to state what it was in the formation of the caste or of the society that gave the advantage to the uppermost layer. But there is the fact that the uppermost layer is what it is. The thinker must go to the top, says the poet. This is but partially true. Well reader, if you are inclined as I am, please go with me and dig up the lower strata, and you will find gems and diamonds far superior to any that you have seen. Nay some of the diamonds may surpass in brilliancy and size that which now finds a place in the Crown of England, I mean the Kohinur. I am not a socialist, but I should certainly say that it will be to the advantage of society if these gems and diamonds are unearthed and are given their proper place in Society.

"Laws grind the poor, and rich men rule the law." There is great truth in this observation of the poet, and it must be the aim of the Courts of justice to lay proportioned loads on each of the parties when they come into Court. The needy man has to subject himself to all restrictions to raise the money he wants, and Shylock dictates the terms of the bond and sues to enforce it to the letter. Shall the Court enforce the penalty of the bond. No Portia advocates the cause of the needy man, and the Duke who is all Equity gives relief. But there is the other side. The lender incurs additional risk, if he lends to the poor man who has not got sufficient property and shall not the lender charge higher interest, or take additional security for the money he advances. Some debts are likely to prove bad ones, and shall not the lender, on the principle on which postal insurance is affected, charge additional interest, or impose other restrictions. The question therefore

arises, and it is not an easy one to answer, how far the conditions imposed in such case, should be enforced.

Where the bargain was unfair to one of the parties, Courts of Equity gave relief by adopting certain peculiar rules of construction. Courts of Equity in some cases put a restricted construction on general words in view to give effect to the real intention of the parties. Where there were stipulations as to time, Equity looked at the whole scope of the transaction to see whether time was of the essence of the contract. Also where penal provisions were inserted in instruments to secure the payment of money or performance of contracts, those provisions were not strictly enforced by Courts of Equity. The present article will deal only with the last class of cases.

One of the classes of cases in which Equity gave relief against penalties was mortgage transactions. "A Court of Equity" says Pollock "treats the contract as being in substance a security for the repayment of money advanced, and that portion of it which gives the estate to the mortgagee as mere form, 'and according in direct violation of the [form of the] contract, it compels the mortgagee to reconvey on being repaid his principal, interest and costs.' The general rule is 'once a mortgage and always a mortgage,' and it cannot be superseded by any express agreement of the parties.

Another class of cases is where a sum is made payable on the breach of any condition of the contract. Courts of Equity tried to find out in which cases the sum fixed was a penalty, and in which cases liquidated damages. In English law the intention of the parties is looked into to find out whether the sum fixed is penalty or liquidated damages. The Indian Contract Act, however, cuts the Gordian knot by abolishing the distinction altogether. Very wide discretion is given to the Courts by s. 74 of the Act according to which "the party complaining of the breach is entitled, whether or not actual damage or loss is proved to have been caused thereby, to receive from the party who has broken the contract reasonable compensation not exceeding the amount so named."

The first explanation to the section (74 of the Indian Contract Act) provides, that a stipulation for increased rate of interest from the date of default may be a stipulation by way of penalty. This provision was perhaps inserted in view of the fact that there were decisions to the effect, that if the higher rate of interest were to be charged only from the date of default, such a provision was not in the nature of a penalty. (2 M. H. R. C. 205; T. L. R. 12 Mad. 161, at p. 166; I. L. R. 14 Bom. 200; I. L. R. 17 Bom. 106; I. L. R. 9 Cal. 689; I. L. R. 27 Cal. 421). On the other hand, there were also decisions, to the effect that even if the increased rate of interest were to be payable from the date of the agreement, the stipulation was not by way of penalty (I. L. R. 11 Mad. 248; T. L. R. 17 Mad. 62; I. L. R. 13 Cal. 200; and I. L. R. 15 All. 222). These

were based on the Privy Council decision in L. R., 10 I. A. 162; I. L. R. 10 Cal. 305, *Ran Balkishen Dass v. Raja Deen Bahadoor Singh*. But that case turned upon the construction of a decree, and the provisions of the Indian Contract Act were not therefore applicable. It would appear from the decision in a recent Madras case (I. L. R. 25 Mad. 343) that the Contract Act of 1899 which has introduced the new explanation applies only to suits *instituted* after the commencement of the said Act. The new Act of 1899 came into force on 1st May 1899, and even if the contracts had been entered into prior to that date, if suits were instituted subsequently, the new provision would be applicable. The first explanation does not say that every stipulation for higher rate of interest from the date of default is a penal one; but states only that it may be so in some cases. The Indian Contract Act, in deviating from the English Law, has wisely given ample discretion to the Courts and, each case must be decided on its merits. There are numerous circumstances which have to be looked into before deciding if a stipulation is penal in its nature or not. The mere fact that the terms are exorbitant is by itself not sufficient to make them penal; but if it also appears that one of the parties was at a disadvantage, or did not fully understand what the terms were, the terms would become penal. This takes us very near the portion of the Law of Contracts which deals, with Duress and Undue Influence.

In the case reported in I. L. R. 25 Mad. 343 (*Sankara Narayana v. Sankara Narayana*) the principal money due on the bond sued on was payable in half yearly instalments, and in default in the payment of any one instalment, the whole of the balance became due at once with interest at 180 p. c. p. a. from the date of default. No interest was due up to the date of default. The case did not come under the new Act, and probably as the law then stood the present decision is correct. But I see no reason what difference it makes if the rate of interest is increased from zero to 180 instead of from 6 or 12 or 18 to 180. I submit that the alteration in the section is material, and that in every case what the Court has *now* to decide first is whether the stipulation is penal. In the former Act this discretion was not vested in the Courts. The former section confined itself to cases, whence a sum was fixed which was payable on the breach of a contract. Now whatever be the form the stipulation takes the Courts have to decide whether it is in the nature of a penalty or not. If then, it is to be considered that their Lordships who decided the case under consideration exercised the discretion vested in them by s. 74 of the present Act, it may well be doubted if the discretion was correctly exercised. The circumstances in which the contract was entered into do not appear from the report of the case.

There is a class of cases which calls for special notice. I mean deposits. A person deposits a certain sum as security for the due execution of a contract

and there it also a stipulation in the contract that in case of defaults in any or all the terms of the contract the sum deposited shall be forfeited. What is to become of the deposit in case of breach? I have been able to lay my hand only on one reported Indian case, i. e., *Srinivasa v. Ratnasabapati* (I. L. R. 16 Mad. 474). The contract in that case was with the municipal council of Negapatam for the lighting of the town and the plaintiff was the holder of a decree against the contractor who had also attached the deposit (Rs. 500), prior to the resolution of the Municipal Council declaring the deposit to be forfeited. The provision of the contract in this case was that that contractor should forfeit the deposit on any default made by him in carrying out his contract. The material portion of the judgment of their Lordships Mr. Justice Muttusami Iyer and Mr. Justice Parker is as follows:—

“Upon the second point we are of opinion that the penalty prescribed by the Muchilika of 22 March 1887 is one which cannot be enforced, since the contract renders the penalty altogether irrespective of the importance of the breach (see *Soper v. Arnold*; and *Lakshman Das v. Ohtor*, 37 Ch. D. 96, 14 App. Cas. 429, I. L. R. 10 All. 29). The contract does not fall within the exception to s. 74 of the Indian Contract Act, since the bond was not given under the provision of any law for the performance of any public duty or act in which the public are interested. No doubt the public are in a sense interested in the proper lighting of the Municipal town, but the contract is not one for which any special provision is made in the Municipal Act, and cannot be placed in a different category to a contract made with any private individual.”

The correctness of this decision is questioned by Mr. Shephard in his commentaries on the Indian Contract Act. From a consideration of the English cases (*Hinton v. Sparkes*, L. R. 3 C. P. 165, *Soper v. Arnold*, 37 Ch. D., 96; and *Wallis v. Smith*, 21 Ch. D. 243, 260) Mr. Shephard deduces the principle, namely, that when a deposit is to be forfeited for the breach of a number of stipulations, some of which may be trifling, some of which may be for the payment of money on a given day, the rule regarding penalties does not apply and that the bargain of the parties is to be carried out.

There is yet another question, namely, granting that the deposit is forfeited in a suit for damages for the breach of contract, is not the deposit to be taken into consideration in calculating the damages payable by the defendant to plaintiff? The question has, I think, to be answered in the affirmative. This is what the case, *Soper v. Arnold* referred to in the Madras decision above cited actually decides. There is no magic in the word ‘forfeiture’. Forfeit (vt.) means to lose or lose the right to by some defaults, offence or crime; and forfeit (n.) means what is or may be taken in requital of a misdeed committed. This is what I find from Webster’s dictionary. The idea

of compensation thus appears to be present in the word 'forfeiture' and in any case there is nothing in the word to infer that what is lost by the loser is acquired by the gainer absolutely. It appears to me that it follows, as night follows day, that the deposit should be deducted out of the sum due as damages, and the decree should only be for the balance.

Note—Since writing this article the following decisions have appeared—25 All. 26; 30 Cal. 65, 27 Bom. 21, and a decision of the Hon'ble Sir V. Bhashyam Aiyengar reported in the current series of the Madras Law Journal. The Calcutta decisions decidedly support the view advanced in this article.

THINKER.

RECENT ENGLISH CASES.

CARRIER—Lighterman—Contract—Exemption. "loss of goods which can be covered by insurance"—*Negligence of carrier's servants—Liability of carrier.* Goods were loaded on a barge under a contract for carriage by which the barge owner was exempt from liability "for any loss of or damage to goods which can be covered by insurance." The barge was sunk owing to the negligence of the servants of the barge owner, and the goods were lost:—*Held*, that the barge owner was not exempt from liability for loss or damage caused by the negligence of his servants. *PRICE & Co. v. UNION LIGHTER-RANGE COMPANY* (1903, 1. K. B., 750).

CRIMINAL LAW—High treason—Practice—Motion to quash indictment—Expatriation in time of war—Naturalisation Act, 1870 (33 & 34 Vict. c. 14), s. 6. On a trial for high treason the Court will not entertain a motion to quash the indictment as defective, but will, leave the prisoner to his remedy by motion in arrest of judgment or by writ of error. The Naturalisation Act, 1870, provides by s. 6 that "Any British subject who has at any time before or may at any time after the passing of this Act, when in any foreign State and not under any disability, voluntarily become naturalized in such State, shall, from and after the time of his so having become naturalized in such foreign State, be deemed to have ceased to be a British subject and be regarded as an alien." :—*Held*, that the section does not empower a British subject to become naturalized in an enemy State in time of war; and that the act of becoming naturalized under such circumstances is itself an act of treason, and ineffectual to afford protection against an indictment for treason in subsequently joining the military forces of the enemy). *THE KING v. LYNCH*, (1903, 1. K. B., 444).

VENDOR AND PURCHASER—Mistake—Sale by auction—Purchase of wrong lot—Consensus ad idem—Contract—Wrong date—Memorandum in writing—Specific performance—Statute of Frauds (29 Car. 2, c. 3). At a sale by auction of landed property on November 18, 1901, the defendant bid for one lot by mistake for another, and it was knocked down to him. On discovering his mistake he refused to sign the contract, whereupon the auctioneer signed it as his "agent." The printed particulars, conditions, and annexed form of contract had been prepared for a sale on "October 17, 1901," which was postponed till November 18, but by inadvertence the original date, though altered in the particulars, remained in the conditions and form of contract. *Held*, that there was no contract within the Statute of Frauds, nor, *consequenter*, any consensus ad idem, to support an action by the vendor for specific performance. *VAN PRAAGH v. EVERIDGE* (1903, 1 Ch., 434).

Priority—Equitable Mortgage—Notice—Fraud of vendor's solicitor—Legal Estate—Possession of title-deeds—Forged receipt—Liability as between two innocent persons. A purchaser who has, before completion of his purchase, received notice of an outstanding equitable interest must, in order to get a good title from his vendor, take care so see that that interest is got in or destroyed. If he chooses to complete in reliance upon the assurance of the vendor, or of the vendor's solicitor, that the interest has been got in or destroyed, he does so at his own risk if it turns out that the interest is still outstanding, and the conveyance to him of the legal estate, accompanied by the delivery (unknown to the owner of the equitable interest) of the title-deeds, affords him no protection against the prior equitable interest. *JARED v. CLEMENTS* (1903, 1 Ch., 428).

WILL—Substitutional gift—Death "before becoming entitled" to a share—Entitled in "possession" or in "interest"—Construction of will. In a substitutional gift in a will "in the event of either of my grandchildren dying before becoming entitled to any share of my estate."—*Held*, upon the construction of the will, without reference to any authorities, that "becoming entitled" meant becoming entitled in possession, not becoming entitled in interest. *In re MAUNDER. MAUNDER v. MAUNDER* (1903, 1 Ch. 451).

GLEANINGS.

Infant's liability for Torts.

THE general doctrine that an infant is liable for his torts has long been so well established that only the exceptions to it are of interest. But the exact limits of the doctrine and of the exceptions are not always clearly understood. In *Lowery v. Cate* (Tenn.) 57 L. R. A. 673, the Court refused to hold an infant liable for negligence in the performance of a contract for threshing grain, as a consequence of which there was a fire causing much loss. The gravamen of the action was deemed to be, not a tort independent of the contract, but an injury to be made out only by proving the contract and showing negligence in its performance. The annotation to the case carefully reviews the English and American decisions on the subject. While there is no conflict as to an infant's liability for torts not connected with contract, there is conflict as to liability for torts which he commits to induce another person to enter into a contract with him. Misrepresentations as to his age or other matters, by which he obtains a contract, are held in England insufficient to make an infant liable, for the reason that this would be really an enforcement of the contract, and that the deception is part of the contract. In this country, on the other hand, the overwhelming weight of authority is to the contrary, though Massachusetts and Maryland have adopted the English doctrine. The question has been settled in four states (Iowa, Kansas, Utah, and Washington) by statutes prohibiting the disaffirmance of an infant's contract where, on account of misrepresentations as to his majority, or from his having engaged in business as an adult, the other party had good reason to believe him capable of contracting. An infant's misrepresentations as to the property which he sells are regarded as part of the contract, for which he cannot be held liable. For injuries which an infant does to property in his hands as bailee, he is held not to be responsible, if the damages are occasioned simply by his ignorance or negligence, but, if he damages the property by any deliberate or intentional wrong, he is held in most states to be liable, notwithstanding any stipulation in the contract to the contrary. For refusal to deliver goods which he has in his possession as bailee all the courts sustain his liability. In case of contracts other than bailments the same distinction between negligence and wilful or deliberate wrongs is maintained, and for torts more remotely connected with contracts the infant is generally held liable. An infant trustee is not generally made to account for assets received when under age, but, if he occupies an office for which he is ineligible, he can be held liable for his official acts in tort. An accounting for, or specific restitution of

property obtained by an infant's fraud can be compelled in England, but not usually in this country.

As to estoppel of an infant, there are two classes of cases: First, where, in an action upon a contract induced by his fraudulent misrepresentations that he was of age, he sets up his infancy as a defense; and, second, where he has given a deed of property, or executed a release for money due him, and later seeks to recover the property, or compel a second payment, upon the pretense that he has elected to avoid his deed, or contract of sale, or release, upon reaching his majority. As to the first class he is not estopped, except in a few jurisdictions, and never in an action strictly at law, upon the contract. This is upon the ground that estoppel would have the effect simply of validating the contract, against the policy of the law. But as to the second class he is generally estopped in this country although some few cases hold that the doctrine of estoppel does not apply at all to infants), and always in England.—*Case and Comment.*

Club Law.

CLUBS, said Lord Lindley in *Wise v. Perpetual Trustees Co., Limited* (72 L. J. O. P., 31), "are associations of a peculiar nature. They are societies the members of which are perpetually changing. They are not partnerships. They are not associations for gain; and the feature which distinguishes them from other societies is that no member, as such, becomes liable to pay to the funds of the society, or to any one else, any money beyond the subscriptions required by the rules of the club to be paid so long as he remains a member. It is upon this fundamental condition, not usually expressed, but understood by everyone, that clubs are formed, and this distinguishing feature has often been judicially recognized."

This broad statement of the law by so eminent an authority as Lord Lindley will be hailed with delight by clubland, and, we venture to submit, with some slight surprise by lawyers. Rightly or wrongly, a very general idea has existed for years past that creditors had some remedy against clubs and similar nebulous associations. Opinions were not agreed as to the nature of this remedy; but the generally accepted view was that a proprietary club could be sued in the club name, that constituting it for the purposes of an action a firm, and judgment obtained against it, and the property of the club seized in satisfaction. Probably Lord Lindley's statement of the law will not affect proprietary clubs. Members' clubs have always caused lawyers difficulty; but again the generally accepted view was, we believe, that a creditor could sue one or all of the members of the committee responsible for the order given, and that such members probably had a right of

indemnity over against the general body of members. On these lines Mr. Worldly Solicitor advised a client lately, and the "Interview" appeared in our April number. This advice was evidently given before a full report of *Wise v. Perpetual Trustees Co., Limited*, was available, or on the assumption that the rules expressly provided for such indemnity. In consequence of this decision, however, it will be necessary for lawyers to somewhat reconsider their opinions as to the position of clubs.

The case of *Wise v. Perpetual Trustees Co., Limited*, is a Privy Council case, and is reported in vol. 72 of the Law Journal Reports, Privy Council cases, p. 31. The case came from New South Wales, and raised, as Lord Lindley truly said, "the extremely important question whether the members of an ordinary club are personally liable to indemnify the trustees of the club against liabilities incurred by them as such trustees."

The facts of the case were somewhat involved; but the position, stated shortly, was that certain gentlemen took a lease of certain premises at a rental of 555*l.* per annum and subject to certain onerous covenants. These premises were occupied by the club—the Cercle Francais—which paid the rent until it was dissolved. The premises were then let to another club—the Cosmopolitan Club Co.—which also came to grief, and the liabilities of the lease were thrown upon the trustees, who were—except one, a Mr. W. H. Paling—unable to meet their obligations; with the result that Mr. W. H. Paling, and after his death his estate, had to pay various sums amounting to a sum of 2,350*l.* in excess of moneys received for underletting the premises. These moneys Mr. W. H. Paling's executors sought to recover from the members of the club, viz., the Cercle Francais. The rules of the Cercle Francais prescribed the entrance fees and subscriptions, but there was no rule imposing any liability on any of the members to pay more. The question to be decided, said Lord Lindley, "may be regarded as not yet covered by authority, and a choice must be made between either ignoring the essential features of a club or holding the general rule established by *Hardon v. Belilios* as inapplicable."

In *Hardon v. Belilios* (a) the Privy Council had to consider the right of trustees to be indemnified by their *cœtui que trustent* against liabilities incurred by the trustees holding trust property; such a right, said the Privy Council, was well established in the simple case of a trustee and an adult *cœtui que trust*, but, in Lord Lindley's opinion, this rule was inapplicable to trustees and members of a club.

Three other decisions were noticed by Lord Lindley. In an old case decided 1836, *Fleming v. Hector* (b), the Court declined to make members of a

(a) 1901-A. C. 118.

(b) 2 M. & W. 172.

club liable to creditors in an action for debt, and in another old case, decided in 1852, *In re St. James Club* (c), the Court also declined to make them liable in winding-up proceedings. Another case, decided in 1881, *Minnitt v. Lord Talbot* (d), Lord Lindley brushed aside neither the grounds on which the decree was made appearing, nor the grounds on which members were made liable.

The question therefore was not quite covered by any authority, and Lord Lindley found no difficulty in laying down the rule that the members were under no legal nor equitable obligation to pay or contribute anything towards the indemnity of the trustees, who had only themselves to blame for their own imprudence in not seeing to their own safety; a decision in favour of the trustees would, in his Lordship's opinion, be not only hard on the members of the club, but inconsistent with the terms on which they became members.

This important decision is likely to be thoughtlessly welcomed by clubmen, but it may have an effect which may prove highly inconvenient. The case will, of course, have no effect on proprietary clubs; landlords will, as heretofore, grant leases to the proprietors, and tradesmen will give credit to the proprietors. Probably members' clubs will experience no difficulty in obtaining goods on credit from tradesmen, but we opine that landlords will, as heretofore, not be willing to grant leases to associations of so peculiar a nature as clubs. Hitherto a lease of club premises has nearly always been made to trustees on behalf of the clubs, and landlords will still insist on this practice being followed. Will members, however, be willing to come forward and take on themselves personal liability jointly and severally for rent of the premises, usually a considerable sum, and the performance of the covenants of the lease, usually an onerous obligation, with the knowledge that they have no right of action against the members of the club? We doubt it; they will, we think, insist on some new club regulation giving them the right to enforce indemnity against the members of the club.

The points was not expressly touched on, but it may be fairly inferred that if the Cercle Francais had had a rule to the effect that if the trustees incurred any personal liabilities in respect of the lease the members should be jointly and severally liable to indemnify them, the decision would have been different. The Court would not, it is assumed, tamper with the sanctity of contract.

This Privy Council decision, of *Wise v. Perpetual Trustee Co. Limited*, and Lord Lindley's judgment thereon, demand most careful attention and thought by club committees, and particularly by club trustees. The out-

come of the decision may not prove so pleasant for clubmen if it leads to the general introduction of some drastic and sweeping rule expressly throwing liability on members.—*Law Notes.*

The Law and Survivorship in Accidents.

WHEN parties who have mutual rights of succession, such as parent and child, or husband and wife, perish in the same calamity, there is no presumption of law, arising from age or sex, as to momentary survivorship either by the law of England or by the law in the United States. By the law of both countries the question of survivorship is treated as one of fact depending wholly on evidence, and if the evidence does not establish the survivorship of any one, the law will treat it as a matter incapable of being determined. The rule is clearly stated in Campbell's Ruling Cases—"Where several persons are involved in the same calamity, *e. g.*, a shipwreck, there is no presumption, by reason of age or sex, that the one survived the other, or that all died at the same time" (Vol. viii. p. 512). The effect is, that where two persons who have made mutual wills perish in the same calamity, and there is no evidence of survivorship for however brief a period, the Probate Division will decree that there was an intestacy in both cases. In such a case the Court grants administration with the will annexed in each case to one of the next-of-kin of the respective parties. (In the Goods of Alston (1892) 66 L. T., N. S., 591.) The Ecclesiastical Courts held that where no question of survivorship is proved as between parties having mutual rights of succession, neither of the parties transmitted a succession to the other, and they pronounced decrees as if they both died simultaneously. It clearly appears from the judgment of Lord Wensleydale in the leading case of Wing v. Angrave (1860) H. L. Cas. at pp. 213, 216) that the contemporaneous death of two persons who have made mutual wills produces an intestacy in each case, unless either testator expressly provided for the contingency. The result logically is that the rule established by that case presumes that death is contemporaneous when persons perish in a common catastrophe. But in that case Lord Campbell (Lord Chancellor) said: "I need hardly say, that I think there is no foundation for the doctrine, erroneously imputed to the Master of the Rolls (for it seems he never laid it down), that where it is left doubtful which of two individuals died first, there is a presumption of law (*juris et de jure*) that they died at the same time. I will not say that this is impossible, although time, like matter, is said to be infinitely divisible, but such a presumption (of simultaneous death) is not warranted by decision, by dictum, or by analogy." (Wing v. Angrave, *Ibid.*, at p. 199).

In order to avoid incurring an intestacy under the above circumstances, either express provision must be made for the contingency of contemporaneous death by the will, or, where there are mutual prior limitations, the limitations over must be made by way of substitution, so as to provide against lapse. In the Goods of Alston, the President of the Probate Court pointed out to counsel that "the actual words of the will have something to do with it." A judge is to construe, and not to make a will, and—"It is not what the testator meant, but what is the meaning of his words." (Wigram on Evidence, 4th edition, page 8, section 9, cited by Lord Wensleydale in

Wing v. Angrave, *supra*, at p. 215). In the same case Lord Wensleydale quoted Fearn as saying that it is better that the intentions of twenty testators every week should fail of effect, than that the rules should be departed from upon which the security of titles, and the general enjoyment of property so essentially depend. (*Ibid.*, p. 216.) A gift over on a particular event is expressly conditional, and may fail either because the particular event does not happen, or because it cannot be ascertained whether the particular event has or has not happened. But it is equally established that a gift over may be made to take effect if, from any cause the prior gift does not take effect. Jones v. Westcomb, Prec. in Ch., 316; 1 Eq. Cas. Ab., 245; Arelyn v. Ward, 1 Ves. Sen., 240; Hilbersdon v. Lowe, 2 Hare, 355; Warren v. Ruddall, 4 K and J, 603, 610, and other cases were indicated by Lord Cranworth in Wing v. Angrave. The *ratio decidendi* of the House of Lords in that case was that the gifts over to the appellant, who was executor and residuary legatee under the wills of two commorientes, were made on a particular event; that of survivorship, and it was not in the power of the appellant to prove survivorship in either case.

It seems to follow that an intestacy, arising under similar circumstances to those in the case of Wing v. Angrave, might be avoided, no less if the will clearly expressed that the limitations over were to take effect in any event, however the prior limitations failed, than if express provision was made for the contingency of simultaneous death. The case of Wing v. Angrave shows that the principle that the intentions of the testator are to be observed, does not extend to what Lord Wensleydale in that case called "the loose sense of the word." (*Ibid.*, p. 215.) The intention of the testator is cut down and controlled "by the meaning of his words." The litigation in Wing v. Angrave arose out of facts that were described by Lord Chelmsford as "extra-ordinary and improbable." The appellant, who was an ultimate legatee under two wills, was deprived of any benefit under either by "a singular and unforeseen accident." Two persons, husband and wife, made their separate wills. In the husband's will the property was given to his wife, "and in case my wife shall die in my lifetime," then to W. W. in trust for the children on their coming of age, and in case all of them should die under age then to W. W. for his absolute use and benefit. In the wife's will (made under a power given by her deceased father, in default of the exercise of which the property was to go to relatives specifically named) the property was given to the husband subject to interests to the children, "and in case my husband should die in my lifetime," then to W. W. absolutely. The husband and wife and three children perished at sea, being all swept off the deck by one wave, and all disappearing together. It was held that there was no presumption that the husband had survived the wife, or the wife the husband. It was also held (Lord Campbell, Lord Chancellor, dissenting) that on the true construction of the wills, it was necessary for W. W. to show affirmatively that one or the other had survived, and that in the absence of such proof, the wife's property went to the relatives specifically named in the will of her father, as if there had been no will by the husband, nor any appointment by the wife.

Prior to the leading case, litigation had arisen out of the same facts (Underwood v. Wing, (1855) 4 De Gex, M and G, 633). This was a suit by

the representative of the next-of-kin of the husband against Wing as his executor, claiming his residuary personal estate. It was held by the Master of the Rolls, and his decree was afterwards affirmed by the House of Lords, that the husband's residuary personal estate went to the husband's next-of-kin as under an intestacy. The *ratio decidendi* of Lord Cranworth in *Underwood v. Wing* was that the executor of the husband's will had failed to prove that the wife died in the lifetime of the testator. The decision in *Underwood v. Wing* did not help the defendant in that suit when appellant in the later suit of *Wing v. Angrave* because the decision in the former case did not proceed upon the ground that there was proof that the husband did not survive the wife, but that there was no evidence to show which of them was the survivor. Lord Wensleydale, in *Wing v. Angrave*, summed up the position in the following incisive manner:—"The appellant would be entitled under Mrs. Underwood's will only in the event that the husband, but under neither if they died at the life-time of the wife; and under Mr. Underwood's will only if the wife died in the lifetime of the husband, but under neither if they died at the same instant." (*Ibid, supra*, p. 214.) The decision is thus brought in harmony with that in *Phene's Case* (1870), L. R. 5 Ch., 139, where it was held that the representative of a legatee must prove that the latter survived the testator. The presumption of law that a person who has absented himself from home without being heard of for seven years is dead applies only to the fact of death and not to the time. The person who claims under a person who was nearer of kin than the petitioner to the deceased must prove that such person survived the testator. While the Courts of the United States have adopted in its integrity the rule laid down in *Wing v. Angrave*, the French Civil Code (Article 720-2-2) lays down certain presumptions of survivorship—to have effect only in the absence of evidence—where persons having mutual rights of succession perish in a common catastrophe. The presumption of survivorship, by the Code Civil, is based on considerations of age and sex. The presumption is in favour of age up to 15, and against it after 60. Those under 15 survive those over 60. A male survives a female when there is only a disparity of one year between their ages.

In re Greene's Settlement (1865), L. R., 1 Eq., 283; 35 L. J., Ch., 252, affords an instance of a whole family perishing in a common catastrophe, at considerable intervals. This was a petition by the next-of-kin of Mrs. Greene for payment out of court of moneys paid into court by the trustees of her marriage settlement. The decision establishes that persons claiming property as next-of-kin to a deceased intestate, and showing their kindred, are entitled, in the absence of evidence that a person now dead and nearer of kin to the intestate survived him. The facts of the case constitute one of the tragedies of the Indian Mutiny. Mr. Greene was murdered at Setapow by sepoys on the 3rd June, 1857. His wife escaped with their child, but afterwards became separated from it, and was murdered at Lucknow 16th November, 1857. There was some evidence that the child was taken from its nurse by sepoys on the 7th June. At the date of the petition, more than seven years having elapsed since the child was last heard of, it was presumed to be dead. It was held that a respondent who had taken out letters of administration to the infant had failed to discharge the *onus probandi* of showing that the child had survived the mother.—*Law Students Journal*.

REVIEWS.

Smith's Leading Cases. Eleventh Edition by THOMAS WILLES CHITTY, Master of the Supreme Court, Barrister-at-Law, JOHN HERBERT WILLIAMS, LL. B., and HERBERT CHITTY, M. A., Barristers-at-Law. LONDON: Sweet and Maxwell, Ltd., 3 Chancery Lane, W. C. 1903. Roy. 8 vo. Pages: i. 130,853, and 90; ii., 92,865 and 61. Price 3*l.* 10*s.*

WE have before us the eleventh edition of Smith's Leading Cases in two bulky volumes. Its name has become almost a by-word with every one connected with law. Its plan, arrangement and scope are matters of common knowledge. This monumental work of John William Smith deservedly took its place as a standard work nearly half a century ago, and its successive editions prepared by editors of acknowledged learning, have served to strengthen and solidify its reputation. In the present edition, the learned editors have made the notes concise and accurate; and at the same time preserved all the distinctive features of the book. The cases which deal with cognate subjects are grouped together. The notes to *Keech v. Sandford* and *Moss v. Gallimore* are combined; and the subject of "deceit" is dealt with entirely in the note to *Paseley v. Freeman* in Vol. II. The cases on Statute of Frauds, *Birkmyr v. Darnell*, *Peter v. Compton* and *Hain v. Warlters* are placed together in Vol. I. The cases on evidence, *Pries v. Torrington* and *Hingham v. Ridgway* are placed next to each other in Vol. II. And *Collins v. Blanton* and *Merryweather v. Niscom* are together in Vol. I. A portion of the former notes to *Ashby v. White* has been expanded, and appears in the notes to *Fletcher v. Rylands* which was first added in the tenth edition as a leading case. All the recent cases are woven into the notes with remarkable discrimination: this feature lends an additional attractiveness to these volumes. We believe that every lawyer in India has in his library a copy of this book: our recommendation to them is to exchange them with the present edition.

Rawlinson's Municipal Corporation Acts. Ninth Edition, by JOHN F. P. RAWLINSON, K. C., LL. M. and J. A. JOHNSTON, B. A., Barrister-at-Law. LONDON: Sweet and Maxwell, Ltd., 3 Chancery Lane, W. C. 1903. Roy. 8vo. Pages lxxvi, 602 and 106. Price 42*s.*

THIS Book is divided into two parts, the first of which is confined to the three statutes which bear the title of Municipal Corporations Acts, viz., 45 & 46 Vic. c. 50, 46 & 47 Vic. c. 18, and 56 Vic. c. 9. Every section of the Municipal Corporations Act, 1882, is fully annotated. The annotations are prepared from the provisions of the cognate statutes and from the decided

cases. They are concise, to the point and exhaustive. The second part contains enactments relating to the power and duties of Municipal Corporations under those Acts, as distinguished from their functions as urban authorities under the Acts relating to Public Health. They are 48 in number and cover a variety of points which the provision and the accumulated wisdom of the legislator have provided for. The Education Act, 1902, passed in the last Session also finds a place. These Acts are adequately annotated. The most noticeable feature of the book is its copious index which occupies over 100 pages and which greatly enhances its value as a book of reference. The Municipal institution is a creature of English Law: and the Municipal legislation in this country had therefore to draw largely from English statutes and English case-law. In the proceedings of the Municipalities, and in cases arising under the Indian Municipal Acts, one has not infrequently to look into English Acts and cases for precedence and guidance. To every one connected with the Municipalities and with the Municipal litigation this volume will be greatly serviceable as containing the English law upon the subject in a handy shape.

A Digest of Privy Council Rulings (with notes of cases in I. L. Reports bearing on them) to the end of 1902. By T. V. SANJIVA ROW, First Grade Pleader, Trichinopoly. TRICHINOPOLY: St. Joseph's College Press, Second Edition. 1903. Roy. 8vo. Pages lxxxviii and 1310. Price Rs. 17.

To describe this portly volume as a digest of Privy Council rulings will not be an adequate description. It is a complete digest of cases decided by the Privy Council; and it is a great deal more than that. To each Privy Council case is appended a string of cases decided by the Indian High Courts, in which the case is referred to, followed, distinguished, discussed, observed on, explained or applied. These latter are arranged in four groups representing the different High Courts: in each of the groups, the cases are arranged in their chronological order, with their dates printed prominently in the margin. Here, the learned compiler has wisely contented himself by stating briefly, in his own words, the point decided in the case, and by making apparent the bearing each case has upon the Privy Council case. This arrangement has succeeded in fulfilling the object of the learned compiler, viz., of tracing at a glance the history of each decision of the Privy Council upto the present date. The book further contains table of cases, and an exhaustive index, which is helpful in finding out the High Court cases referred to in the book. The learned compiler has devoted the best part of his energy and intelligence to the preparation of this volume and they have fructified in producing a volume that will, we expect, find a place in every lawyer's library.

Confession and Evidence of Accomplices. By PRASANNA-NARAYAN CHAUDHURI, B.L., Government Pleader, Pabna. CALCUTTA: Weekly Notes Printing Works, 3, Hastings Street. 1903. Crown 8vo. Pages 18 and 157. Price Rs. 2.

WE welcome with pleasure the appearance of this little volume. It deals with two subjects: (1) Confession, and (2) Evidence of Accomplices. Confessions are divided into those made before a police officer and those made before persons other than police officers, and the latter are sub-divided into judicial confessions and extra-judicial confessions; The second subject is discussed under the headings of evidence of co-accused, evidence of accomplice, selection of approver and trial of approver. The learned author has quoted very largely from the judgments, which has served to make his exposition of the subjects full and reliable. The law of confession and of evidence of accomplices play a very large part in the criminal law: this book will, therefore, be of great use to judges, lawyers and police officers.

Summary of the Code of Criminal Procedure. By RAMANLAL P. SHAH, Pleader, Nadiad. AHMEDABAD: Rajnagar Type Foundry Printing Press. 1903. Demi 8 vo. Pages 415. Price Rs. 3-4-0.

It is difficult to imagine the purpose this book is intended to serve. It does not give the entire text of the Criminal Procedure Code; some sections are omitted altogether; some are very scantily summarised; and some are reproduced verbatim. The notes are far from satisfactory: they are neither full nor upto date: and are lacking throughout in co-ordination. We regret we cannot recommend this book to students; much less to practitioners.

Shakespeare's Othello and the Crash of Character. By WILLIAM MILLER, O. I. E., D. D., LL. D., Principal of the Madras Christian College and Vice-Chancellor of the University of Madras. MADRAS: Messrs. G. A. Natesan and Co., Esplanade Row. 1903. Crown 8vo. Pages 108. Price as. 8.

REV. DR. MILLER has, in the present book, thrown a new side light on Shakespearian literature. It is a study of the moral, the play is intended to portray. We make no doubt that this brochure will form a thoughtful after-reading of the celebrated play, Shakespeare's Othello.



The Hon. H. T. Candy, C.S.I.,
Acting Chief Justice, High Court of Judicature at Bombay.

THE
Bombay Law Reporter.

July, 1903.

MR. E. T. CANDY.

MR. EDWARD TOWNSHEND CANDY was born at Mahabaleshwar on the 15th April 1845; and is the second son of the late Major Thomas Candy, C.S.I., who was for so long the Principal of the old Poona College, at the Visram Bagh, Poona, and whose pupils were to be found among the educated Indians of the last generation in various lines of life, official and non-official.

Mr. E. T. Candy was educated at Cheltenham College, and won a place in the competitive Examination for the I. O. S. in 1864, when he was 19 years old. In those days the successful candidates stayed one year only in England, and Mr. Candy arrived in Bombay on the 9th November 1865, Mr. (now Sir Evan) James, and Messrs. Carey, R. E. Candy, Spence, T. D. Mackenzie and McLeod Campbell being among his contemporaries.

The two Messrs. Candy lived with Major Candy at Sion Fort, where undistracted by society they were able to obtain the full benefit of their Munshi and Pandit, who resided with them at Sion, and also the assistance of Major Candy, who was well-known as an accomplished Oriental Scholar. The result was that they passed their Hindustani Examination in January 1866, and in Marathi in April of the same year. The young Civilians were then posted to their districts, Mr. E. T. Candy proceeding to Ahmednagar, where he remained till October 1868, when he acted as Assistant Judge and Agent for Sirdars at Poona. On reversion to the Revenue line he became Assistant to the Collector of Poona, and was employed on special duty in taking up and paying compensation on behalf of Government for all the land which is now covered by the well-known Karakwasla Tank, which furnishes Poona and a large area of country with water. In July 1869 Mr. Candy became Assistant Judge at Ahmedabad, and since then he has been continuously employed in judicial or judicial-political work. In 1871 the late Mr. A. C. Watt

and Mr. E. T. Candy were sent as Judge and Assistant Judge to Khandesh, where the judicial affairs of that district were supposed to be in a somewhat disorganised state. Thence Mr. Candy went to Ratnagiri, as Assistant Judge. It was in Ratnagiri that Mr. Candy's work came prominently before the public. In the year 1872 the disputes between the Khots and the Government were in a most acute stage. Hundreds of suits had been filed in the Courts against Government, and there was apparently no way out of the deadlock. Learned Judges like Messrs Ixon, Lyon and H. Birdwood gave elaborate decisions; but a solution of the difficulties seemed as far off as ever. Mr. Candy, as described by him in the preface to his "Notes on Khoti Tenure", was led to examine the question historically, and to trace the sequence of the disputes as shown in the old records of the Collector's office. The result was the "Notes" alluded to above, which were subsequently published by Government as one of the Government Selections. It is possible that Mr. Candy, after a lapse of thirty years, would not now be prepared to subscribe to all the propositions which he set forth in those Notes: but there is no doubt that he brought into prominent notice the crux of the whole dispute, when he pointed out that the "fons et origo mali" was the obstinate attempt of the Bombay Survey Department to apply the ryotwari settlement of the Deccan to a district in which the Revenue system was not ryotwari. It was the well-known story of putting new wine into old bottles. Bombay Act I of 1865 was essentially a Ryotwari Settlement Act, and the definitions contained in the Act were framed accordingly. Sections 37 and 38 were pitchforked into the Act at a late stage of the legislative proceedings to provide for the introduction of the ryotwari survey settlement into the Khoti villages of the Ratnagiri district. Was it to be wondered at that the bottles burst, and that the whole district was plunged in litigation? The settlement officers, accustomed to the simplicity of a ryotwari settlement, naturally held that the actual occupant of a field must be the "Khatedar" of that field, and entered him as such, without much regard to the question whether the occupant was an old "Watani-Kul" and as such entitled to certain occupancy rights, or whether he was merely the cultivator of the Khot's "home-farm," with possibly no occupancy rights beyond the title to require legal notice of the determination of his tenancy. This was the fatal flaw in the attempted settlement, which Mr. Candy pointed out. Government recognised the fact, and appointed a Commission to bring about an amicable settlement. The result was Bombay Act I of 1880, which was mainly the work of Mr. A. T. Crawford and the late Rao Saheb V. N. Mandlik. Mr. Candy had no hand in that settlement, he having been appointed in October 1873 to act for Mr. (now Sir John) Jardine as Judicial Assistant to the Political Agent, Kattyawar. It is no secret that Mr. Candy

did not approve of some of the details of that settlement; but his work from 1873 to 1882 (including a long furlough, and a few months as District Judge in the Southern Maratha Country) was of a very different nature from that which had enlisted his interests in the Konkan. In those days Kattyawar was full of *causes celebres*, and Mr. Candy had his fair share in the settlement of interesting disputes. Jamnabai's claim against the Porbandar State was one which had dragged its slow length along for many years, but received its quietus from Mr. Candy. Another historical case was the dispute between the Shrivaks and the Thakor Saheb of Palitana regarding the sacred hill of Shatrunjay. Though various disputes between the Jains and the reigning Chief are continually cropping up, the main questions regarding the sacred hill are taken to be *res judicata* by Mr. Candy's decision, which was affirmed by the Bombay Government and the Secretary of State.

In December 1882, Mr. Candy came down to Thana as District and Sessions Judge; but he did not stay there long, as in May 1883 he proceeded to Sind to act as Judicial Commissioner. Obtaining short leave in the spring of 1884, he returned to Bombay and was appointed to act as Judge of Ratnagiri. It was there that he penned his criticism of Police Methods, which was the foundation of the well-known Resolution of Government, to be found on the opening pages of the new edition of the High Court Criminal Circulars. One marked feature in Mr. Candy's work as a District Judge was his insistence on the importance of inspecting Subordinate Courts, and judging the merits of the Subordinate Judges not only by their Judgments but also by their ability in supervising their establishments.

• In January 1885 Mr. Candy joined his appointment as Judge and Sessions Judge at Surat, but in July of the same year he was called to the seat of Government to act as Remembrancer of Legal Affairs. Thence he was appointed to act as Judge and Agent for Sardars of the Deccan at Poona in the place of the ill-fated Mr. Watt, who was killed in a carriage accident. With the intervals of the officiating appointment as Judicial Commissioner in Sind in 1886 and a furlough in 1887 Mr. Candy remained as Judge at Poona till January 1899, when he came down to Bombay to act as a Judge of the High Court for Mr. Herbert Birdwood. In 1899, after a few months on special political work at Baroda, he acted for Mr. (now Sir John) Jardine in the High Court, and in 1891 he proceeded on long furlough. While in England he was appointed permanently to the High Court Bench; and in June of that year he returned to Bombay and has since then taken his full share of the work civil, criminal, original and appellate, of the Court.

While on the High Court Bench Mr. Candy was a party to many important judgments. Among his Judgments on Hindu Law, the most noteworthy

are the judgments in *Appaji v. Keshav* (I. L. R. 15 Bom. 13); *Bapu v. Vithu* (ib. 110); *Magantlal v. Bai Jadav* (1 Bom. L. R. 574); *Lakshmbai v. Sarasvatibai* (1 Bom. L. R. 430) and *Shamsing v. Santabai* (3 Bom. L. R. 89). We are unable to express our concurrence with Mr. Candy's views expressed in the first and last of these cases. In *Appaji v. Keshav*, the question was as to the power of the sons to compel partition of ancestral property, when they were joint with their father and uncles. Mr. Justice Telang held that they could do so, but the majority of the Court including Mr. Justice Candy held the contrary. We are inclined to agree with the former in his interpretation of Mitakshara; but we have always read with pleasure Mr. Justice Candy's vigorous refutation of Mr. Telang's arguments. In *Shamsing v. Santabai*, Mr. Justice Candy held that a Mahomedan convert could give away his Hindu son in adoption, by delegating his power to a Hindu brother. On the face of it, the decision is startling, and seems to justify the well-known definition of law as the opposite of common sense. To us the fallacy seems to lie in supposing that the Freedom of Religion Act absolved the Court from determining, in a case of conflict of laws, which of them governed it. The father was born under one system of law, and by conversion adopted another system. In the words of Mr. Mayne, "he accepted the new mode of life governed by a law recognised and enforced in India." And a statute has imposed the duty of administering one system or the other according as the party is a Hindu or a Mahomedan. This must evidently have reference to the particular time in which the act in question is done. Here, in this case, the so-called adoption was admittedly performed when the Mahomedan law had become binding on the father. So the question had to be dealt with under that law. Of what use was it that the son was yet a Hindu. The right of giving is the father's not the son's. And yet Mr. Justice Candy seemed to think that Hindu Law alone governed the case. For it is well-known that adoption is unknown to Mahomedan Law. The Freedom of Religion Act does not affect this question. To say that the convert father continued to be the guardian of the son is only tantamount to saying that, for all legal purposes, the relation of father and son continued as before. That is not enough. What is the effect of such continuation. Is the father to be supposed to continue as a Hindu or is the son to have become a Mahomedan along with the father. Mr. Justice Candy proceeds on the first alternative and we say erroneously. The Privy Council in *Abraham v. Abraham* (9 M. I. A. 242) observe that when the statute says that Hindu Law is to be applied to Hindus and the Mahomedan law to Mahomedans, the rule refers to Hindus and Mahomedans, *not by birth merely but by religion also*. And this observation was again approvingly referred to in *Jowala v. Dharm* (10 M. I. A., 511, 537). Therefore, it is obvious that so far as all legal acts

in which either of them is alone concerned, the father is bound to obey the Mahomedan law, and the son the Hindu law. Now is the giving in adoption of the boy, the act of the father or of the son. The very name *dattaka* shows that the giving and taking are the important part and the son's wishes are never consulted. If so, there can be no question but that the legal capacity to give is determined by the status of the giver, not of the boy. This point has not been lost sight of even in the modern development of the law of Adoption which shows a strong tendency to secularize. For, although the rules as to the boy, namely that he should not be an only son or an adult son &c. have been held to be recommendatory the necessity for the parent to be the giver has never been questioned. Hence, the first question his Lordship ought to have addressed himself to was whether a Mahomedan father could give a son in adoption. We say "a son" because for our present purpose we assume that the filial relation continued even after conversion. Nevertheless, it seems to us that being a Mahomedan the father could not give away the son in adoption, and *a fortiori*, the uncle could not do so on his authority because he could not delegate power which he himself had not. To put the same thing in another way, this was a case where law and religion were inseparable. The Freedom of Religion Act had nothing to do with it. It has been held that a Hindu or Mahomedan convert to Christianity cannot be allowed to be a polygamist. If Mr. Justice Candy's reasoning were correct, then the Freedom of Religion Act must be held to have saved his right to marry more than one wife which he undoubtedly had before conversion. But as a matter of fact polygamy is repugnant to the new system of law adopted by the convert and the Freedom of Religion Act can not and does not impose it on that system. So also gift in adoption is unknown to Mahomedan law and there is nothing in the Act which could justify the importation of it into that law. As Mr. Dicey points out in his "Conflict of Laws" p. 475 "status is relative and differs according to the law of different communities. In no matter do the laws (of different communities) differ more widely than in their rules as to status." And no system of law would tolerate the importation of a new status into it by the back door. So far, we have assumed that the Courts correctly interpreted the Freedom of Religion Act, when they laid down that the right of guardianship of the son was saved by it. But we are disposed to agree with Mr. G. M. Tripathi in his able criticism of the judgment on this question, printed in the forgoing numbers of this volume. Mr. Candy presided over one of the most protracted trials at the Sessions of the High Court. It was the trial of Olive Durant. It required no little tact to deal with that redoubtable lay-lawyer, and we remember an old veteran of the High Court, who was present when Mr. Justice Candy summed up the case, declare that he had

never heard such an able address to the jury within the last fifteen years.

In March 1897 Mr. Candy was appointed Vice-Chancellor of the Bombay University, to which office he was reappointed in 1899 and again in 1901. He only resigned on proceeding to Europe in June of last year. During his more than five years tenure of the Chairmanship of the Syndicate several burning questions came up for discussion.

In the same year Mr. Candy went on an inspection tour. He examined the District Courts of Ahmedabad, Broach, Surat, Dhulia, Belgaum, Dharwar, Karwar, Ratnagiri, Ahmednagar, Nasik and Thana. At each place the Subordinate Courts at the sadar stations were examined so far as the working of the civil accounts and process serving were concerned; and to that extent also an examination was partially made of the Courts of Small Causes at Ahmedabad, Broach and Surat. The points to him he paid most attention in his inspection report were supervision of the establishment by the District Judge, inspection by the District Judge of the Subordinate Courts, efficient management of the English office, of the sheristedar and the clerks under him and of the record office under the record keeper, and lastly, the proper working of the bailiff department. The report is rich in weighty suggestions; and it is satisfactory to note that many of the reforms pointed out by Mr. Candy, have been carried out.

In 1901 Mr. Candy was entrusted with the preparation of New High Court Civil Circulars: they are published in the Bombay Government Gazette for 1903, Part I (dated 10th March 1903), at pp. 285 to 397. These Circulars are now being issued by the High Court as a separate book. The New High Court Criminal Circulars, published already by the High Court in a book form and which are also to be found in the Bombay Government Gazette for 1902, Part I (dated 31st July 1902), at pp. 1236-1288, are the work of Mr. Candy and the Hon. Mr. Fulton. These two books bear ample testimony to the close acquaintance of Mr. Candy with the endless details in the working of, and practice prevailing in, the Subordinate Courts.

In August 1901 Mr. Candy was summoned to Simla to join in Lord Curzon's well-known Educational Conference, one of the results of which was the appointment of the now notorious University Commission. It was doubtless in consideration of his services as Vice-Chancellor and in educational matters generally that Mr. Candy was decorated with the Companionship of the Star of India at the Delhi Darbar.

His last piece of important work has been connected with the Indian Police Commission. As the Judicial Member of that body he has no doubt had much to say on all judicial and quasi-judicial matters, which must have been discussed by that Commission. We await with great interest the publication of the Report.

There can be no doubt that Mr. Candy will be long remembered in this Presidency as one of the most painstaking and conscientious Judges that have sat on the Bench. He loved the work, and there was no case, simple or complicated, in which he did not endeavour to master thoroughly all the facts before giving decision. His knowledge of, and acquaintance with, the habits and customs of the people enabled him to come to right conclusions, especially in criminal cases. His main strength was his robust common sense which is clearly discernible in his judgments. They are characterized with thoroughness in investigation, ability in handling facts and vigour and virility in expression. Above all, his desire to arrive at the right conclusion is manifest in every line. This desire saved him from the consequences of his temper, whose out-bursts cannot be forgotten by those that practised before him. But at the same time, on no occasion has any doubt been felt as to his conscientious desire to do impartial justice between the parties. He was absolutely free from the dangerous weakness of showing over fondness for a particular lawyer. His keen intellect and wide experience gathered while serving in almost all the parts of this Presidency made him an uncommonly good Judge, and his departure at the present juncture adds poignancy to the regret we feel for parting with one, who, notwithstanding his temper, was at heart good-natured and just.

THE LATE MR. M. H. STARLING.*

We heard him yesterday address

The Bench so oft he graced before,

But with the Bar to-day deplore

The good man gone for evermore :

—A loss that's public, none the less.

Tho' gone, we won't our eyes believe

He's not in his accustomed chair :

His form familiar fills the air ;

We see him, hear him everywhere ;

His death, we scarce can yet conceive.

* These lines are an attempt to put into verse the general feeling created by the sad death of the subject of them after a brief illness and the impressions of the Bench and the Bar of the High Court of Bombay wherein he had so long a practice. Some of these impressions were so happily given expression to by the learned Chief Justice on the morrow of his funeral-day, and, though closely reasoned out, they so easily lend themselves to versification, that, in framing the third stanza, a large use has been made of his *ipsissima verba*.

‘Ripe lawyer, upright advocate,’
 From ‘petty artifices free,’
 As straight of speech as straight can be,
 And full of genial sympathy :
 —A model man to imitate,

Who taught us how he waged the war
 With adverse fates, for ill or good,
 Doing his duty, as we should :
 Brave soul, who bore with fortitude
 His sufferings, till ‘he crossed the bar.’

F. R. V.

15th July, 1903.

REFERENCES IN THE HIGH COURT.]

APPELLATE SIDE.

1903 July 13. This day when the Hon. Sir Lawrence Jenkins, K. O. I. E., Chief Justice and the Hon. Mr. Justice Jacob took their seats in the first Court at 11 A. M., his Lordship, the Chief Justice, addressing the members of the Appellate Bar said:—

Before proceeding to the business of the day, I desire to refer to the loss we have suffered since we last met, of one whom we all recognised as a ripe and able lawyer, an upright advocate absolutely free from petty artifice, a genial friend, and, above all, a good man in the best and fullest sense. Mr. Starling had lived to be in years the senior member here of the English bar, and his long career of straight dealing is worthy of imitation by us whom he has left behind. Both the Court and the public were largely in his debt for the efficiency with which he discharged his duties when from time to time he acted as a Judge. A more loyal or sympathetic colleague there never was. His services, too, as Clerk of the Crown, a post he held for many years, were of the highest order. Full of simple, manly courage, and undaunted by that before which many other might have yielded, he worked strenuously to the last, and as it indeed would seem as though it was the work he loved so well that has hastened the unexpected close of his life which we now deplore.

The Hon. Mr. D. A. Khare replied:—My Lords,—On behalf of the Appellate Side Bar, I pray to be permitted to associate ourselves with the sentiments expressed by your Lordships with regard to the late Mr. Starling.

Mr. Starling undoubtedly held a leading position in the Bar at the Original Side, but we on the Appellate Side had recently many occasions to come in contact with him as he presided here frequently. Although he never attempted to show himself off, he always brought a solid learning and strong common-sense to bear on the questions that were brought before him for decision, and, above all, he endeared himself to us by his unfailing courtesy, gentle manners and affability. We all had confidence in his judgment, and we never found him grow impatient even when an argument which he disliked was pressed upon him with greater persistency than necessary. My Lords, we all feel keenly the loss the sad death of Mr. Starling has caused both to the Bench and the bar of this High Court.

In the second Court, when the Hon. Mr. Justice Chandavarkar and the Hon. Mr. Justice Aston took their seats at 11 A. M., Mr. Justice Chandavarkar said:—

"We wish to give expression to our sorrow at the sad death of Mr. Starling, who had presided as a member of this Court at various times. He was highly respected by the Bench and the Bar, and his loss will be keenly felt by both.

Mr. Chaubal, addressing their Lordships, said: "My lords, Mr. Starling was a senior counsel of this Court. He acted at different times as a Judge of the Court and gave eminent satisfaction to the parties and the pleaders at the Bar. He has been suddenly taken away from the midst of us, and we all feel his loss very keenly.

RECENT ENGLISH CASES.

CARRIER—Common carrier—Inherent unfitness of thing to be carried—Damage arising from—Liability of carriers. The defendants contracted with the plaintiff as common carriers to carry for them an engine from his yard to a neighbouring town on the defendants' railway. The engine was on wheels and fitted with shafts to allow of its being drawn by horses. While the defendants were drawing the engine with their horses to the railway station one of the shafts, owing to its being rotten, broke; the horses took fright and upset the engine, which was damaged. The defective condition of the shaft was not known to either the plaintiff or the defendants, and could not have been discovered by any ordinary examination. *Held*, that as the engine was not in fact fit to be carried in the way in which it was intended to be carried, and the damage resulted in consequence of that unfitness, the defendants were excused. *Fisher v. Lancashire and Yorkshire Railway Company* (1903, 1 K. B. 878).

CLUB—*Principle upon which clubs are founded—Liability of trustees of club in respect of leases—Liability of the members of a club.* The rule that trustees are entitled to be indemnified by their *cœstus que trustent* against liabilities incurred by their holding trust property does not apply to cases where the nature of the transaction excludes it. An ordinary club is formed upon the tacit understanding, judicially recognised, that no member as such becomes liable to pay to its funds or otherwise any money beyond the subscriptions required by its rules. Trustees of a club who have incurred liability under onerous covenants contained in a lease, accepted by them on its behalf, are entitled to indemnity out of any property of the club to which their lien as trustees extends. Its members are not, by reason only of being *cœstus que trustent* personally liable to indemnify them, where there is no rule imposing such liability upon them. *Wise v. Perpetual Trustee Company* (1903 A. C. 139).

—*Alteration of rules—Raising subscription—Expulsion of member—Injunction.* A club which is governed by rules prescribing the amount of the annual subscription, but not containing any provision for the amendment or alteration thereof, cannot by a resolution passed by a majority of the members present at a general meeting raise the amount of the subscription so as to bind existing members, and the Court will interfere by injunction to restrain the expulsion of a dissentient member for refusing to pay the increased subscription. *Harington v. Sendall* (1903, 1 Oh., 921).

GAMING—*Unlawful gaming—Common gaming-house—Shop containing Automatic machine—Gaming House Act, 1854 (17 & 18 Vict. c. 38), s. 4.* The appellant, a shopkeeper had in his shop an automatic machine which was worked on the following principle: A person desiring to use it put a penny in a slot and pressed and released a spring. According to the force with which this was done the penny fell into one or other of seven compartments. If it fell into either of two compartments it was automatically returned to the sender, and if it fell into the centre compartment he received from the machine a ticket entitling him to twopennyworth of articles sold in the shop. If, however, the penny fell into any of the other compartments it was retained by the machine. It having been proved that a number of boys and men had used the machine on certain days and had lost and won money by means of it, the appellant was convicted under s. 4 of the Gaming House Act, 1854, of having opened, kept, and used his shop for the purpose of unlawful gaming being carried on therein:—*Held*, that the conviction was right. *Fielding v. Turner* (1903, 1 K. B., 867).

PERPETUITY—*Remoteness—Equitable contingent remainders—Child en ventre sa mère—Relation back.* The rule of law as to remoteness—which

allows absolute ownership to be suspended for a life or lives in being and twenty-one years afterwards, and treats a child en ventre sa mere as a life in being—is not infringed by the fact that when the instrument limiting the estates comes into operation (in the case of a will the deviser's death) the first life tenant is en ventre sa mere; but on his subsequent birth alive the law applies the doctrine of relation back, and treats the child as having been born alive at the time when the instrument came into operation, whether the application of the doctrine is for the benefit of the child, or immaterial to him, or to his actual disadvantage. *Wilmer's Trusts, in re: Moore v. Wingfield* (1903, 1 Ch., 874).

PRINCIPAL AND AGENT—*Bank of England—Transfer of stock—Power of Attorney—Implied warranty of authority—Innocent misrepresentation—Forged power—Liability of agent.*

The principle of *Collen v. Wright*, (1857) 8 E. & B. 647, 657, is not confined to cases where the transaction with the person representing himself to be an agent results in a contract. A broker applied to the Bank of England for a power of attorney for the sale of Consols believing himself to be instructed by the stockholder, and bona fide induced the bank to transfer the Consols to a purchaser upon a power of attorney to which the stockholder's signature was forged: *Held*, that the broker must be taken to have given an implied warranty that he had authority, and that he was therefore liable to indemnify the bank against the claim of the stockholder for restitution. *Starkey v. Bank of England* (1903, A. C. 114).

TRAMWAY—*Road authority—Construction of Tramway—Obligation to keep surface of tramway in good condition—Neglect of duty—Liability in damages to individual—Tramways Act, 1870 (33 & 34 Vict. c. 78), s. 28.* Under s. 28 of the Tramways Act, 1870, a tramway company is bound to keep that part of the highway which lies between the rails in a fit and safe condition for the passing traffic to the satisfaction of the road authority; and failure to perform this duty renders the tramway company liable in damages to a person injured thereby. *Dublin United Tramways Company v. Fitzgerald* (1903, A. C. 99).

WILL—*Shelley's Case, Rule in—"Issue"—Estate in special tail—Will—Construction.* A devise to "Charles if he marries a fit and worthy gentlewoman and his issue male to such issue male and their male descendants in failure of which" then over:—*Held*, upon the true construction of this will to be equivalent to a devise to "Charles and such issue male as he may have by marriage with a fit and worthy gentlewoman and their male descendants, in failure of which" then over, and thus to create an estate in special tail male in Charles. *Pelham Clinton v. Duke of Newcastle* (1903, A. C. 111).

CLEANING.

Right to arrest Mail Carrier.

THE question of the immunity of the driver of a mail wagon from arrest while in performance of his duties, on a charge of violating the police laws of the state, was under discussion not long ago in the public press. The matter arose on the threat of the Society for the Prevention of Cruelty to animals to arrest the drivers of mail wagons who maltreated their horses. It is said that the police refuse to make the arrests in such case or to allow anyone else to interfere, and that the postoffice authorities advise the agents of the society to make such arrests after the offending drivers have taken their horses to the barns, and that, in the language of one of the journals, until then "their persons are shrouded in a sort of sacred mantle which it is blasphemy to profane." The advice to make the arrests after the mail has reached its destination and the driver has completed his trip is certainly good as a matter of practical sense, provided the offender can then be identified and arrested, but the lawfulness of his arrest, even while in course of business on the mail wagon, seems to be sustained by the decisions of the Federal courts on the subject. In *United States v. Kirby*, 7 Wall. 482, 19 L. ed. 278, where a mail carrier was arrested while carrying the mail, for murder, and the sheriff who arrested him was indicted for obstructing the mails, the court, in dismissing the indictment, said: "The statute of Congress, by its terms, applies only to persons who knowingly and wilfully obstruct or retard the passage of the mail or of its carrier; that is, to those who know that the acts performed will have that effect and perform them with the intention that such shall be their operation. When the acts which create the obstruction are in themselves unlawful, the intention to obstruct will be imputed to their author, although the attainment of other ends may have been his primary object. The statute has no reference to acts lawful in themselves, from the execution of which a temporary delay in the mails unavoidably follows. All persons in the public service are exempt, as a matter of public policy, from arrest upon civil process while thus engaged. Process of that kind can, therefore, furnish no justification for the arrest of a carrier of the mail. This is all that is decided by the case of *United States v. Harvey*, Brunner Col. Cas. 540, Fed. Cas. No. 15, 320, to which we are referred by the counsel of the government. The rule is different when the process is issued on a charge of felony. No officer or employee of the United States is placed, by his position or the services he is called to perform, above responsibility to the legal tribunals of the country and to the ordinary processes for his arrest and detention when accused of felony, in the forms prescribed

by the Constitution and laws. . . . Indeed, it may be doubted whether it is competent for Congress to exempt the employees of the United States from arrest on criminal process from the state courts when the crimes charged against them are not merely *mala prohibita*, but are *mala in se*. The court dismissed the indictment on the ground that a "common-sense" construction of the statute did not prevent a temporary detention of the mail caused by the arrest of the carrier upon an indictment for murder. The offence of cruelty to animals certainly seems to fall into the class of crimes *mala in se*, and an arrest therefor, as the Supreme Court of the United States intimates, is one which Congress has no power to make unlawful. At any rate, by what the court calls a "common sense" construction of the statute it is not violated by such an arrest. This is in harmony with the early decision by Washington, J., in the circuit court of the United States: (*United States v. Hart*, Pet. U. C. 390. Fed. Cas. No. 15, 316). There a sheriff was indicted for stopping the mail by arresting the driver of a mail wagon for fast driving through a crowded street. Judge Washington said the act of Congress ought not to be so construed to shield the carrier, though a temporary stoppage of the mail might be the consequence.

The complex relations of state and Federal governments is a fertile source of perplexity and erroneous ideas on many subjects. The public generally cannot be expected to have a very accurate understanding on point of this kind, but there are many practical questions upon which it is desirable to clear away erroneous ideas as far as possible in order that laws may be properly enforced. This is one of them. If the enforcement of the law against drivers of mail wagons can be had only by arresting them while they are driving, it seems safe, under the decisions above quoted, to make the arrests.—*Case and Comment.*

REVIEWS.

Kerr on Injunctions. Fourth Edition, by EDGAR PERCY HEWITT, LL.D., assisted by SYDNEY E. WILLIAMS and JOHN M. PATERSON M. A., LL. M., Barristers-at-law. LONDON: Sweet and Maxwell, Ltd., 3 Chancery Lane, W. C. 1903. Roy. 8vo. Pages xlvi and 656. Price 35s.

KERR on Injunctions is scarcely unknown to any lawyer in India. The constant references made to it in arguments at the bar and in judgments by the Bench are undoubted signs of its worth and popularity. Hence, the legal profession only requires to be told that a fresh edition of this well-known work is just published. In the present edition, all the decisions

bearing upon the subject reported since the date of the last edition, are carefully embodied, the whole work is thoroughly revised and some portions of the same are entirely re-written. The learned editors of the work have prepared the present edition in a way that will enhance the utility and reputation of the book. The index is copious and the general get up of the book is all that can be desired.

The History and the Law of Interest. By A. S. GOUR, M.A., LL.D., D.C.L., of the Inner Temple, Barrister-at-Law. ALLAHABAD: Pioneer Press. BOMBAY: Thacker & Co. 1903. Crown 8vo. Pages vi, 172; lxxi, 221; xiv, 162; xxxv. Price Rs. 21-4-0.

WE congratulate Dr. Gour upon his having usefully directed his attention to the important subject of Interest. All the more so, because there was till now no independent work upon the subject; and scarcely a day passes on which the Courts are not called upon to adjudicate upon the subject. The History of Interest occupies 172 pages of the book. The learned author takes us back to the time when the civic life of yore was shaping itself into existence and then proceeds step by step to show the influence which the successive course of events had upon Interest in Europe and in India. This portion abounds with interesting details and even a layman is sure to find it an instructive reading. This history is wound up with the conclusion that it is not by the action of the legislature or that of the Judges that the rate of interest in a country can be brought down. It is the law of economics alone that regulates such rate. That law has given to England, as also to other countries that have trod upon its heels, the current rate of 3 or 4 p. c. at the present day, and the same law, though different in its nature owing to the difference in the prevalent economic forces—forces that had bidden adieu to England some 500 years ago—has allotted a much higher rate to India wherein the usual rate may be said to be 24 p. c. which is also the rate current in countries having economic organizations or civil social constitution similar to India. The judges of a country have to accept this law and the rate of interest that may be established by it, and their duty lies in ascertaining and maintaining it. We regret we fail to perceive the validity of this statement. With the advance of civilization, the aim of legislature and of judges should be to bring down the rate of interest. The prevalence of a heavy rate of interest means an obstruction to the progress and prosperity of a nation. Any further comments on this point here would be beyond the purpose of this review. The operative part of the treatise begins with the law of Interest. Chapter I considers the *dandapat* doctrine of Hindu law and its far-reaching effects. Interest allowed by various Acts is

in Chapter II. This is followed by a detailed consideration of the law of Interest allowed by agreement. Chapter IV treats of Penalties. The fifth and the last chapter contains general observations. In the Appendix are set out English Statutes and Indian Acts, or their portions, which bear upon the subject. Thus this book is a complete compendium of the law of Interest. The general portions of the book are worked up in a way as to reflect great credit on the learning and industry of the author. We are glad to be able to say that the volume forms a learned contribution to the legal literature in India. Our only regret is that it is rather heavily priced.

Legal Medicine (in India) and Toxicology. Vol. II. Illustrative cases. By

- Major COLLIS BARRY, I. M. S., F. R. S. E., F. I. C., etc., Chemical Analyser to the Government of Bombay and Professor of Chemistry, Medical Jurisprudence and Toxicology, Grant Medical College, Bombay. BOMBAY: Thacker and Company Limited, Esplanade. 1903. Demi 8 vo. Pages xvi and 611. Price Rs. 15.

THIS is the second volume of the work on Legal Medicine by Major Collis Barry, the first volume of which we reviewed in September last. The present volume contains a large number of illustrative cases collected from various sources. These cases are representative of different conditions which have already been met with and are therefore available as evidence where similar conditions are the subject of discussion in a Court of law. As a book of reference, this volume will be greatly serviceable to the members of the legal and medical professions.

Fifteen Decisive Battles of the Law, being a study of some leading cases in

- the Law of England.* By ERNEST ARTHUR JELF, M. A., of the Inner Temple, Barrister-at-law. LONDON: Sweet and Maxwell, Limited, 3 Chancery Lane, W. C. 1903. Cr. 8vo. Pages xii and 115. Price 3s. 6d. net.

FOLLOWING out the idea started by Sir Edward Creasy in writing "The Fifteen Decisive Battles of the world from Marathon to Waterloo," Mr. Jelf has published "Fifteen Decisive Battles of the Law." "There are some battles," says Sir Edward Creasy, "which claim our attention . . . on account of their enduring importance, and by reason of the practical influence on our own social and political condition, which we can trace up to the results of those engagements. They have for us an abiding and actual interest, both while we investigate the chain of causes and effects, by which they have helped to make us what we are; and also while we speculate on what we probably should have been, if any one of those battles had come to

a different termination." Similarly, says Mr. Jelf, there are some battles of the law which claim our attention for the same reasons; battles of enduring importance, battles whose practical influence is immense. Have not they also then for us "an abiding and actual interest"? Is it not worth while here also to investigate the chain of causes and effects by which they have helped to bring the law into the condition in which we find it today? Must not we also speculate on how things might have been, if any of these law Courts battles had come to a different termination. With these ideas before him, the learned author proceeds to select fifteen decisive battles of the law. They are—*Ashby v. White*, *Mitchell v. Reynolds*, *Keech v. Sandford*, *Ward v. Turner*, *Doraston v. Payne*, *Williams v. East India Company*, *Butterfield v. Forrester*, *Addison v. Gandasegni*, *Hadley v. Baxendale*, *Lynch v. London G. O. Co.*, *Jones v. Just*, *Mersey Steel and Iron Co. v. Naylor*, *Queen v. Tolson*, *Derry v. Peek* and *Allen v. Flood*. The history of each of these battles is retold in a simple narrative style, singularly free from technical expressions. The book is neatly got up and forms an interesting reading.

THE
Bombay Law Reporter.

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CERTAIN FEUDAL TENURES OF WESTERN INDIA.

J. A. SALDANHA, B. A., LL. B.

THERE is no part of India, which can display such a magnificent array of a hereditary aristocracy as Western India, namely the *Sardars*, *Jagirdars* and *Saranjandars* of the Maharashtra, the *Grasias* of Gujerat, and the *Jarejas* of Kutch. They play an important part in the administration and society of this part of the Indian Empire. They hold their lands under the feudal tenure, as I hope to prove; and it is this point of view it is of the utmost importance to bear in mind in dealing with these tenures whether in a Court of Justice or elsewhere.

The essential feature of feudalism, as described by Bishop Stubbs, is that it is a complete organization of society through the medium of land tenure, in which from the King down to the lowest landowner all are bound together by the obligations of service and defence: the lord to protect his vassal, and the vassal to do service to his lord, the rights of defence and service being supplemented in those states which have reached the territorial stage of development by the right of jurisdiction. The land tenures I have mentioned answer this description in many points.

It is important to distinguish these tenures from certain *Inam* tenures, with which they have some points in common, but which are essentially different from them. *Inams* as understood in the Bombay Presidency, are grants of land revenue. In India the ruling power is regarded as the lord or owner of all the lands, and every acre of land is liable to pay assessment to Government. When the right to receive the whole or a portion of this assessment is transferred to an individual as a reward for past services, or assigned as an endowment for temples or other religious or charitable institutions, or conferred for the maintenance of any secular or religious office, there arises a grant which is called an *Inam*. Such grants may go in the shape of direct assignments of land

subject to payment of no rent whatever or only a portion of the rent. They may also be converted into cash payments. Whatever form they may take, they must be regarded as a species of land tenure. Bestowal of Inams formed a peculiar feature of the administration during the Maratha rule. When the British conquered the country, Government adopted the liberal policy of maintaining these tenures without undue interference, and laid down various regulations for the continuance of the Inams under these heads:—Firstly, all *Personal* grants bestowed under a Sanad declaring them to be hereditary are to be continued according to the terms of the Sanad. Secondly, all *Endowments* for the support of mosques, temples or similar institutions, of the permanent character of which there can be no doubt, are to be continued permanently. Thirdly, the same privilege has been extended to Inams held by an *official* tenure, which it is evident from local usage was meant to be hereditary and has been so considered heretofore, even though there be no Sanads declaring it to be so; for instance, Inams which form the authorized emoluments of any hereditary office, as of *Kastis*, village *Joshis*, *Sutar* (carpenter), *Lohar* (blacksmith), etc. Fourthly, there are village officers who are useful not only to the village itself, like those mentioned just now, but both to Government and the village, namely the *Patel* the *Kulkarni* (accountant and writer), the *Jaglia* (village watchman), and the *Mahar* (the low caste village messenger and porter), who have got their hereditary holdings. The third and fourth classes of Inams described above are called *Vatans*. These Inam tenures differ essentially from the tenures under which the Jaghirdars, Saranjamdars, Grasias and Jarejas hold their lands, as will be seen from their description below.

(i). *The Maratha Jaghirs and Saranjams*—These are holdings of a political nature enjoyed by old Maratha military leaders in the Dekkhan. The political connection of the Saranjam or Jaghir tenure is shown by the term *mokassa* applied to them. *Mokassa* was a portion of the land revenue, which went by the name *Chouth*, and which should be distinguished from the term *Sardeshmukhi*. This last term was applied to a hereditary *Vatan*, which was enjoyed by the leading Maratha families of the Dekkhan called *Deshmukhs* from the time of the old Bahmini, Bijapur and Ahmednagar kingdoms. They were held responsible for the tranquillity and peace of the kingdom and for the collection of revenues entrusted to their charge; and for their services they used to receive five per cent. in cash or grain, and five per cent. in grants of arable land. The *Chouth* consisted of 25 per cent. of the revenue of certain districts allowed to a chieftain, on condition of his protecting the districts from foreign aggression by maintaining a fixed number of troops for such service. The *Chouth* was, unlike the *Sardeshmukhi*, not a *Vatan*,

but a grant for military service. The grants of Sardeshmukhi and Chouth were eagerly sought for by the Maratha leaders from the Imperial throne at Delhi for extending and strengthening their power. These rights, as remarked by the late Justice Ranade in his *Rise of Maratha Power*, served in the hands of the Maratha leaders the same purpose of giving legitimacy and expansion to their power, which in the last century resulted from the subsidiary alliances and conquests made by the British Government. In connection with the subject of this essay, it is of interest to bear in mind that the Saranjamdars were holders of portions, called Mokaassa, of the Chouth from their leaders for the maintenance of troops in their service in time of war, and they played therefore an important part as vassals of their lords in the Maratha military system as well as in fiscal administration. I may further quote what Sir Mountstuart Elphinstone wrote about the Jaghirs in a dispatch to the Supreme Government, published in his *Life* by Mr. Cotton in the "Rulers of India" series: "A Jaghir was usually granted during life for the purpose of maintaining troops to serve the state; a small portion was set aside as a personal provision for the chief. This mode of maintaining troops being always kept up, there was no motive for removing the Jaghir-dar, and consequently every grant was renewed on the death of each incumbent, his son paying a relief to Government. When this practice had long subsisted, the Jaghir came to be regarded as hereditary, and the resumption of it would have been viewed as a violation of private property. *The nature and history of Jaghirs has so great analogy to those of feudal benefices*, that the manner in which this transition took place can be easily understood in Europe." This Jaghir system prevailed in the Maratha Country from very ancient times: the whole military organization and the system of land tenure of that country under the Bijapur kingdom and under Shivaji and his successors were so intermingled, that their troops mainly consisted of retainers of chieftains and their vassals, who held lands or assignments of land revenue on condition of military service. This system continued to the latest times, an instance of which is afforded in the fact, that about 25,000 horse and half as many foot of the Peishwa's army at the battle of Kirkee, in 1818, consisted of feudal levies of the Jaghirdars. At present the very existence of these Jaghirs depends upon their holders' loyalty to the British Government or their overlords like the chief of Kolhapur and military service, which however has been recently commuted into cash payment.

(ii) *The Grasias of Gujerat*.—The term *Grasias* as at present understood includes:—

(a) kinsmen of the existing dynasties of ruling Chiefs or Bhayad, who hold lands out of the partrimony of their ancestors, or de-

scendants of former Chiefs or their kinsmen, who, as the tide of conquest swept over them, had been forced to accept the supremacy of another Chief by giving up some of their recognized rights, described as *commendation*, of which there is clear evidence or in the absence of such evidence which can, from the conditions of the tenure held at present, be presumed to have taken place;

(b) descendants of followers of conquering Chiefs, like the Mianas of Malia, who on their settlement in the country, had been allotted villages as their allodial land, and whose successors have preserved their dominion over the land, though during periods of anarchy or usurpation of a neighbouring Chief, they have surrendered partially portion of their lands or some of their rights to that Chief;

(c) holders of a village, or villages, originally granted on Inam, Dharmada, Chakaryat and other personal tenures, or granted on service tenures, over which their ancestors had, during periods of anarchy or weakness of rulers, usurped and thenceforth enjoyed dominion as independent in character as that of a Bhayat or Mulgrasia, and which the present holders enjoy on tenures similar to that of Bhayat or Mulgrasia, in virtue of *commendation* proved or presumed.

The kinsmen of the existing dynasties of ruling Chiefs are called Bhayads, and the other classes of Grasias are called Mulgrasias. The main feature of the Gras tenure is, that where the Grasie is not an independent Chief or Talukdar, paying tribute to the British, but is vassal of a Chief, he enjoys absolute dominion over his land, but under certain conditions, including the obligations of military service against foreign aggression, and payment of dues very much resembling feudal dues.

(iii) *The Jarejas of Kutch*.—The Jarejas were originally a tribe of Rajputs, that conquered the peninsula of Kutch about the middle of the fifteenth century. The more important of the followers of their Chief or the Rao, as he is called, and the cadets of the royal family (called Bhayads or brothers) were granted villages in the conquered territory, and the old Waghella and other Rajput chieftains were generally confirmed in their ancient holdings on their recognizing the supremacy of the Rao and giving up some of their property and rights. Each of the Jareja and other Rajput Chiefs enjoyed unlimited authority within his own lands, the Rao's ordinary jurisdiction being confined to his own *domestic*. The Rao could call upon them for military service in war, and was entitled to certain payments at the time of his installation and on other occasions, which resemble the dues

under the feudal tenure. The principal chiefs formed a Council, which was consulted in all matters concerning their common welfare, like the *Magnum Concilium* of the Norman kings. This state of things still exists in Kutch, only the respective powers of the Rao and the feudal chieftains are more clearly defined by the British Government.

The essential features of the tenures described above do not differ from the essential features of the feudal system of Mediæval Europe. Feudalism was based on the reciprocity of fealty and military service on the one hand and protection on the other, regulated in details by customary law or usage. Exactly the same is the basis of the relationship between the Jaghirdars, Saranjamdars, Grasis and Jarejas and their overlords: as a mark of their loyalty the vassals are bound to be present at the periodical *Dastars* and do obeisance to their lord or his representative; they are all bound by military service to their lord; and in return there is the implied obligation on the lord of protecting his vassals. This system is not peculiar to Western India. Its existence has been traced among the Rajput tribes of Rajasthan by Colonel Tod, and can probably be traced to other parts of India, wherever a military people like the Rajputs have settled. "The leading features among semibarbarous hordes or civilized independent tribes," observes Colonel Tod in his *Rajasthan*, "must have a considerable resemblance to each other. In the same stage of society, the wants of men must everywhere be similar and will produce the analogies which are observed to regulate the Tartar hordes or German tribes, the Caledonian clans, the Rajput *Oula* (race) or Jareja *Bhayat* (brotherhood). All the countries of Europe participated in the system we denominate feudal; and we can observe it in various degrees of perfection from the mountains of Caucasus to the Indian Ocean."

The subject of these hereditary feudal tenures is not merely of academic interest. The maintenance in healthy vigour of the hereditary aristocracy holding these tenures has been always considered wise policy. A hereditary aristocracy serves as a connecting link between the past, the present and the future, and is the surest means of preserving the best traditions of the past for the future. It also constitutes a valuable connecting link between the mass of the people and the rulers, and is a powerful guarantee for insuring the loyalty of the people to the Government. The British Government have adopted several measures for guaranteeing the interests of these landlords. The treaty of 1819 with the Rao of Kutch and the various Kutch Jareja settlements, the institution of the Rajasthanik and Grasia Courts in Kathiawar, the Talukdari Acts, the Treaty of Bandarpur and the subsequent treaties with the Maratha chiefs, the various regulations in connection with the Sirdars of the Dekkhan and the opening of the

Rajkumar colleges at Rajkot and Kolhapur and the Sirdars' High School at Belgaum, have all conducted much towards preserving in their integrity the ancient Rajput and Maratha aristocracy. But notwithstanding these measures this class, except the higher Jaghirdars who are ruling chiefs, is showing signs of rapid decay. To trace the causes of this decay and to suggest remedies for its arrest would be out of place here. To the lawyer it is of interest to know that one main cause of the decline of these tenures lies in the interminable disputes between their holders and their overlords and among the holders themselves, which form a fruitful source of costly litigation in Courts or of ponderous memorials to Government.

RECENT ENGLISH CASES.

CONFLICT OF LAWS—*Agreement made abroad to stifle foreign prosecution—Agreement not illegal where made—Whether enforceable here.* The husband of the defendant having fraudulently misappropriated in France certain moneys of the plaintiff, the plaintiff threatened to prosecute him in the French Courts. Thereupon the defendant, by an agreement made in France, agreed to pay to the plaintiff by instalments out of her own money the amount so misappropriated by her husband, upon the terms that the plaintiff should abstain from prosecuting. The agreement was intended by the parties to be wholly performed in France, and by the French law that agreement was not invalid. An action having been brought in this country to recover instalments due under the agreement:—*Held*, that as by the law of the country where the contract was made and was to be performed the contract was not invalid, the action was maintainable here. *Kaufman v. Gerson* (1903, 2 K. B., 114).

DEFAMATION—*Libel—Fair comment—Literary work—Honest criticism—Withdrawal of case from jury.* A "fair comment" upon a literary work, or other such production, submitted to the judgment of the public, that is to say, a comment which is the expression of honest opinion, and does not go beyond the limits of what may fairly be called criticism, is no libel, even although the comment be not such as a jury might think to be a just or reasonable appreciation of the work criticized. If in an action of libel there is no evidence of anything beyond such a comment as above mentioned, there is no case for the jury. *Moqure v. Western Morning News Company*. (1903, K. B., 100).

CONTRACT—*Illegality—Wagering policy—Insurable interest—Action to recover premiums paid—Insurance law, knowledge of.* The fact that a

person will at some future date be under a moral, though not a legal, obligation to pay for the funeral expenses of a relative is not sufficient to create an insurable interest in that relative's life. The agent of the defendants, an insurance company, in good faith and believing his statement to be true, represented to the plaintiff that an insurance effected by the plaintiff upon the life of his mother would be a good and valid insurance, and the plaintiff, relying upon that representation, effected an insurance with the defendants on his mother's life, and paid premiums thereunder. The policy being illegal and void for want of an insurable interest:—*Held*, that, as the plaintiff was entitled to assume that the defendants' agent would have a knowledge of insurance law, the parties were not in pari delicto, and the premiums could consequently be recovered back. *Harve v. Pearl Life Assurance Company* (1903, 2 K. B. 92).

FIXTURES—*Hiring agreement*—*Chairs fastened to floor of place of entertainment*—*Mortgage of building and fixtures*—*Entry of Mortgagee into possession*—*Right of removal by owner*. Chairs were hired from the plaintiffs for use in a hippodrome by the owner and occupier of the building under an agreement for hire containing an option of purchase which was never exercised. The chairs were fastened to the floor of the building by means of screws, in accordance with the requirements of the local authority:—*Held*, that the chairs did not cease to be chattels because they were screwed down to the floor, and that the property in them did not pass as against the plaintiffs to the mortgagee of the freehold under a mortgage of the building and fixtures. *Lyon & Co. v. London City and Midland Bank* (1903, 2 K. B., 135).

MORTGAGE—*Redemption, Clog on equity of*—*Stock—Limited company, Mortgage by*—*Option to purchase mortgaged stock*—*Debenture stock—Redeemable stock—Irredeemable stock, power to issue*. A loan was made to a limited company on the terms of a letter whereby the borrowers agreed to secure the repayment of the loan with interest by the transfer of certain redeemable debenture stock of the company, and it was stipulated that the lender should have the option of purchasing the whole or any part of the debenture stock at 40 per cent. at any time within twelve months, and that the advance should become due and payable with interest at thirty days' notice on either side:—*Held*, that, within the principle laid down in *Noakes & Co., Ltd. v. Rice*, [1902] A. C. 24; [1900] 2 Ch. 445, 457, the stipulation giving the option to purchase the mortgaged stock was a clog or fetter on the right of redemption and therefore void. The rule prohibiting the clogging of the equity of redemption under a mortgage by an individual applies equally to a mortgage by a limited company. Whether a limited company can issue irredeemable

debenture stock, *quere. Jarrah Timber and Wood Paving Corporation, Limited v. Samuel* (1903, 2 Ch., 1).

RAILWAY—*Passenger—Fare—Passenger travelling on after giving up ticket at station for which it is available.* The defendant, intending to travel by a particular train from H. to M. on the plaintiffs' railway, took a ticket to S., an intermediate station, and after giving up this ticket on the arrival of the train at S., remained in the carriage and tendered to the plaintiffs' servants 7d., which was the amount of the fare from S. to M.—the difference between the fare from H. to S. and the through fare from H. to M. being 9d. The plaintiffs refused the amount tendered, but allowed the defendant to travel on in the same train to M., and sued him for the excess through fare:—*Held*, that the plaintiffs were entitled to recover. *London and North Western Railway Company v. Hinchcliffe* (1903, 2 K. B. 32).

CLEANING.

Law relating to aerial navigation.

W H E N Jules Verne wrote "The Clipper of the Clouds" many people regarded the subject of the book as ridiculously extravagant. Other less sceptical if not more sympathetic, admitted cautiously that there might be such things as airships "Someday." "Someday" is a very accommodating term. It may mean years or centuries. The recent achievements of Dunmont and Spencer indicate however that the day may arrive sooner than was expected. I do not suggest that they have solved the problems of aerial navigation. Personally, I know nothing of the mechanism of their ships beyond what has been afforded by newspaper illustrations. But the possibility of an early development of aerial navigation raises a question. Will the law require to be altered to make room for the coming of the airship? The answer, I think, is that it will.

The theory of the law is that an owner of land owns everything above it; *cujus est solum ejus est usque ad cælum*. Englishmen cherish a legal principle, and any encroachment is jealously guarded. So far has this principle of proprietorship been recognised that an injunction can be obtained against anyone who passes telephone or telegraph wires across another person's land, although there may not be an erection on the land. No one up to the present has ever thought of suggesting that a balloon was a trespasser, except the farmer upon whose land it has alighted, and in his case the compensation paid has made the balloonist not unwelcome. But it nevertheless seems to be the fact that with the law as it stands, aeronauts are trespassers unless they keep immediately over the highways.

If this be so, it is quite clear that before aerial navigation can be developed the law will have to be altered, as it has been for the motor car. To what extent the fundamental principle of law mentioned will have to be modified will require careful consideration. To sweep it away altogether, and declare all space to be the King's highway, would be going to the other extreme. Probably the case will be met by reserving to owners of land all their rights up to "building height," otherwise the privacy of Royalty will be open to violation. Hero worshippers will be able to intrude upon the lonely retreat of their idol. Imagine, too, the annoyance of an interruption during afternoon tea in the garden as Mr. Bizzy Boddy hovers over your lawn.

What the "building height" should be is another matter. When the question crops up it will be astonishing what a number of persons have taken a sudden fancy to Chicago skyscrapers, or contemplate building Eiffel towers on their little plots of land.

This is not all. The owner of land in every case will not be satisfied with this reservation of rights. It may satisfy the man in an out-of-the-way place, but the owner whose land lies in the track of the "liners" will want compensation. His contention will be that he is subject to such risks of overhead collapse or collision that his property is depreciated in value. His right to an action for damages in case of accident will not satisfy him.

There are other aspects of the question—such as whether it will be possible to acquire an easement over land by prescription, that is, by uninterrupted use, as in the case of rights of way on *terra firma*—but these I leave.

Two things are certain in connection with aerial navigation if there is any great development. One is that legislation will be necessary, but not rash or ill-considered legislation, and the other is that the prospect for lawyers will be bright.—*Law Students Journal*.

• Lord Russell of Killowen.

ERSKINE, Scarlett, Charles Russell—these are the three greatest names in the annals of forensic advocacy in England. All three attained the highest honors of the bench. Erskine was Chancellor; Scarlett, Lord Chief Baron; Charles Russell, Lord Chief Justice of England; but to Lord Russell alone it was given to shine with equal lustre in both spheres of bar and bench; to demonstrate that there is no inherent incompatibility—as is so often supposed—between greatness as an advocate and greatness as a judge; that so far, indeed, from this being the case, it is the possession of the judicial mind which is the true secret of success in each.

Carlingford Lough, on the northeast coast of Ireland, is a charming spot with a glorious view of mountain and sea, and here it was—at Seafield House, Killowen—that Charles Russell, with his brother Mathew and his two sisters, spent a healthy and happy boyhood, with plenty of boating and fishing—a good preparation for the strenuous struggles of the bar that were to come.

Great men, it has often been said, have remarkable mothers, and it was so in Lord Russell's case. His mother was a handsome, clever woman, clear-headed and strong-willed like her distinguished son—strict, too, in religious observances. "How we did keep Sunday!" exclaims his sister. "Mamma was most particular on that point. How solemn and holy, everything was, whilst the calm that seemed to me to be over the whole country was like the sensible presence of God!" The piano was never heard except in hymns; no games of cards were allowed, and yet there was nothing of the kill-joy spirit about it. All sorts of childish games, riddles, conundrums, and stories made the evening cheerful. Early associations like these sink deep into the youthful mind and, amid all the strife and distractions of his busy life, the memory of these home scenes enshrined itself as a hallowing influence in the secret recesses of Charles Russell's soul.

He started his career as a solicitor in Belfast, and his fine intellect might have spent itself in the petty activities of a country solicitor's office but for a timely word of advice from Judge Theophilus Jones at the Newry Quarter Sessions. That judge was much struck by the young solicitor's ability in the conduct of his case. He asked Russell to come and lunch with him, and at lunch he said to him: "You are wasting yourself here. Go to England and join a circuit where there are Irish. Try Liverpool, where the Irish are strong." It argued no small courage on Russell's part to take the advice to quit his growing practice in Belfast for the uncertainties of the English bar. Prudent friends were as ready to dissuade him from going as ever they were to Christian in the Pilgrim's Progress, but he had a just confidence in himself—Charles Russell never wanted for courage—and to London he came, and, with his young bride, Miss Ellen Mulholland, by his side, set himself to face the world. He threw himself with the keen zest of conscious power into the full tide of London life; attended Maine's lectures on Roman Law and Jurisprudence, which made a profound and enduring impression on him; frequented the gallery of the House; heard Disraeli and Gladstone thunder against one another, and wrote a weekly London letter for a Dublin newspaper; but he never let himself be distracted from his main object, knowing that the law is a jealous mistress and must be served with an exclusive devotion. "It is the only way," he said, "by which you can succeed at the bar." "I don't think I ever desponded," he adds; "but I will give you

a curious instance of the feeling of despair which sometimes comes over men, and able men too. During my first years at the Bar, Gully, Herschell, and I dined together on circuit one night. Gully and Herschell were in a very desponding mood. They almost despaired of success in England. Gully proposed going to the Straits Settlements, and Herschell to the Indian bar." It is curious to think of that night and to remember what these men ultimately became—Herschell Lord Chancellor, Gully Speaker of the House of Commons. Russell had, indeed, no reason to despond. He made £117 in his first year, £261 in his second, £441 in his third, and £1096 in his fourth.

There is an anecdote of him at this period worth repeating as characteristic of the man. It happened once when he had first come to London and was laying the foundation of his great career that the future Lord Chief Justice went to the pit of a theatre. The piece was popular; the pit was crowded, and the young advocate had only standing room. All on a sudden a man at his side cried out that his watch was stolen. Mr. Russell and two other men were hemmed in. "It is one of you three," tried the man minus his watch. "Well, we had better go out and be searched," said Mr. Russell, with the alertness of mind that did not fail him at a trying moment amidst an excited crowd. A detective was at hand and the suggestion was accepted. As Mr. Russell walked out, the idea flashed through his mind that if the man behind him had the stolen property he would probably try to secrete it in the pocket of his front-rank man. Quick as thought, he drew his coat-tails about him—only to feel, to his horror, something large and smooth and round already in his pocket. While he was still wondering what this might mean for him, the detective energetically seized the hindmost man, exclaiming, "What, you rascal—at it again?" To Mr. Russell and the other man he apologized, and bade them go free. But Mr. Russell, before he had taken many steps, reflected that he could not keep the watch. He went back to the box-office and explained, with a courage on which he afterwards said he rarely experienced, greater demands, that though he did not take the watch he had it. So saying, he put his hand into his pocket and pulled out—a forgotten snuff box!

His practice at first lay mainly in the Liverpool Court of Passage and on the Northern Circuit. But a Liverpool reputation is not long in reaching London in these days. The first important London case in which he was engaged was *Re Grangebrook*, and so impressed was Lord Westbury with the ability of his argument that he shortly afterwards offered him a Country Court judgeship. By 1878 he was in the full tide of professional success. Thenceforward his history is written in the *causes célèbres* of the last quarter of the nineteenth century. One of the earliest was the "convent case" of *Saurin v. Starr*—a case in which a young lady who had joined a convent

complained of being sent away, and it had thus all the piquancy of a religious scandal. "How happy," exclaims Eloisa in Pope's poem:

"How happy is the blameless vestal's lot !
The world forgetting, by the world forgot ;
Eternal sunshine of the spotless mind,
Each prayer accepted and each wish resigned :
Grace shines around her with sereneest beams,
And whispering angels prompt her golden dreams."

But if any one wishes to compare romance and reality—Pope's picture and the true inner life of the convent, with its petty squabbles and "low-thoughted care"—he will find it admirably illustrated in the story of Miss Saurin.

The Belt libel case was another *cause célèbre*. The alleged libel was that Belt, who was a fashionable sculptor, was an artistic impostor, and that the busts and pieces of sculpture which he laid claim to were in fact the work of his pupils or assistants. The case lasted forty-three days, and was the topic of conversation at every dinner-table and in every club. Other cases in which Russell figured conspicuously were the Fortescue breach-of-promise case, the Dilke case, and the Maybrick poisoning case ; but his most signal triumph was the great speech which he delivered before the Parnell Commission. Coleridge has somewhere defined eloquence as "reason penetrated and made red-hot by passion." Sir Charles Russell's speech answers well to the description. It was penetrated and made red hot with the fire of patriotism—with a passionate love for the land of his birth.

"The power," says Lord Justice Mathew, "which made him"—Charles Russell—"the greatest advocate of his time was best displayed when fraud or perfidy or malice had to be exposed. It has been said that the finest actors off the stage are members of the bar. This was not true of Russell. He felt the indignation and contempt which he poured upon the witness. His searching questions flashed in rapid succession; his vehemence of manner, and his determination to force out the truth, secured him a complete mastery of the dishonest witness. His extraordinary power when addressing a jury was owing not so much to any oratorical display as to the authority which he could always exercise over those he sought to influence. Spellbound under his vigorous and often passionate reasoning, their verdict was often due to the merits, not of the litigant, but of his counsel." Somebody once said that his effect on a witness was that of a cobra on a rabbit. Describe the power, analyze it as we will, it remains as inexplicable as genius; it flashed from his personality; he was, as Lord Bowen said, an "elemental force" and his imperious will and masterful temper, his energy and concentration, were but the outward and visible signs of this elemental force. Pitt possessed the same power. He could quell an adversary with a glance.

"I once," says a barrister, "had an opportunity of realising the effect which Russell must always have produced on juries. I came into Court just as he was about to speak in some great case, the particulars of which I now forget. I got near the jury-box and had a good view of him—could see every expression, every gesture, every glance. I then realized for the first time what a splendid man he was—what an impressive personality. I forget what he said. I cannot tell you whether the speech was good or bad. But I don't forget Russell; he appears before me now as vividly as when I saw him on that day. He seemed to me to be quite irresistible, not from anything he said, but from the whole appearance and demeanor of the man. Charles Russell, sitting quietly in court taking no note, looking calmly round, and occasionally tapping the lid of his snuffbox, dominated every one who came within the sphere of his influence."

Mr. O'Brien in his interesting memoir tells how Russell once pounced down on his junior. "What are you doing?" "Taking a note," was the answer. "What the—do you mean by saying you are taking a note? Why don't you watch the case?" "How like Russell?" said a friend to whom he told the story. "It was just the same in playing cards with him. He used to insist on my playing whist, and, worse still, on my being his partner. I knew very little about whist; whenever a card was played I used to look at my hand to see what I had got. Russell would get very impatient at this. He would rap the table and say: 'Why are you looking at your cards? Why don't you watch the game? The game is on the table.' He did not want to look at his cards. He knew them by heart." "So it was," adds Mr. O'Brien, "in law. The game was on the table there too. He knew all that could be known about the case before he came into court. In court he watched the other side, and played on the instant without looking at his hand." But he did not trust his genius alone. He supplemented nature by art—got up his briefs industriously. To qualify himself for arguing mercantile cases at Liverpool he would sit late into the night with some expert friend being coached in commercial routine, and great was the astonishment of commercial witnesses when in cross-examination next morning he discovered a knowledge of customs and terms of trade as to the manner born. Whatever he did, he did thoroughly—threw himself heart and soul into his work. "What a fool I am!" he was once heard to say as he entered the robing-room, flushed with his exertions in court, "knocking myself to pieces about a twopenny-halfpenny dispute." But he could not help knocking himself to pieces—it was part of the intensity of his nature.

Speaking some years before his death of his professional methods, he said: "If you ask me to reduce the common habit of my life to a formula,

I will tell you that I have only four ways of preparing my work. First, to do one thing at a time, whether it is reading a brief or eating oysters, concentrating what faculties I am endowed with upon whatever I am doing at the moment; secondly, when dealing with complicated facts, to arrange the narrative of events in the order of dates—a rule not always acted on, but which enables you to unravel the most complicated story, and to see the relation of one set of facts to other facts. My third rule is never to trouble about authorities or case law supposed to bear upon a particular point until I have accurately and definitely ascertained the precise facts. The last rule is one which the professional man will appreciate better perhaps than the layman. It is not only valuable—I may say this as I did not invent it—but very interesting to me individually, as I got it from Lord Westbury, when a young hand at the bar and pleading before him. I was plunging into citation of cases when he very good-naturedly pulled me up and said: ‘Mr. Russell, don’t trouble yourself with authorities until we have ascertained with precision the facts, and then we shall probably find that a number of authorities which seem to bear some relation to the question have really nothing important to do with it.’ My fourth rule is, Try and apply the judicial faculty to your own case in order to determine what are its strong and weak points, and in order to settle in your own mind what is the real turning point in the case. This method enables you to discard irrelevant topics, and to mass your strength on the point on which the case hinges.”

“His habits of work,” says Mr. Charles W. Mathews, “at all times revealed the strong man. Often when he was at the bar, and when some sensational case was adjourned for the day, have I stayed with him in his chambers, and, as his junior, submitted something which had occurred to me, in the hope of its being useful, and almost as often has come the rebuke: ‘It’s past five o’clock. I don’t intend to resume any thought of the case which is proceeding until we meet here at ten o’clock to-morrow morning. Depend upon it, we have devoted as many hours to our work as can be usefully given to-day. In the morning our refreshed minds may bring us fresh ideas. Will you kindly tell my clerk to call me in twenty minutes as you go out, for I am speaking at Hackney to-night, and if possible I always sleep between day and night work!’ Simple as seem the words I have above quoted, each one of them is something more than an indication of strength, in indicating how strength not only can but should be husbanded. . . . What a power that power of sleep at moments when feebler mortals, under the apprehension of some public performance, are frightening themselves into panic which, though it may endure only until they face their audience and are well through their first spoken sentence, eats into their

nervous strength, first to shatter and by repeated and continuous strain to destroy! But it must not be assumed," goes on Mr. Mathews, "that Lord Russell was not nervous when he rose to speak upon an occasion which he deemed one of importance. He has often told me that, in his opinion, a speaker required to be nervous to produce of his best, and that an audience was much more sympathetic to one who approached them nervously and who by degrees and in their sight and hearing lost his constraint under the influences of his own enthusiasm and their encouragement."

For eloquence of the old *ore rotundo* school Lord Russell had much more contempt than liking, and, as he was not himself apt to be swayed by "tall talking" or "word-spinning," he could not believe that it had any effect, even of a transitory character, on others. According to him, eloquence consisted in the power of evoking the sympathy and stirring the feelings of your audience. "Every man can be eloquent, and on occasion every man is eloquent," I have heard him assert. He has only to convey to his audience that he feels what he says, and to make them feel what he is saying, to accomplish the most difficult task which can be set to eloquence and to win its highest reward. On ordinary occasions he disregarded "form," and even disliked peroration; but, when the occasion warranted, let all who delight in real eloquence turn to the report of the proceedings before the Parnell Commission to satisfy themselves that, given the "cause," he could conjoin the "form" to it. As a rule, I know for a certainty that he did not prepare what he was going to say. His "note" was at most a skeleton of incidents and dates in chronological order, for which he was a great stickler. Lucidity was his first ambition—to make his tribunal follow and understand his case his first aim, and of self-display he never thought at all. The word "dwell," written in his own hand, was the most elaborate direction to himself which I have ever seen in any note of his prepared either for any opening or reply, and this signified that he was to make the most of that particular point.

"In dealing with an English jury, it is better," he said to Mr. O'Brien, "to go straight to the point—the less *finesse* the better. They are busy men, and they want to get away quickly. The great thing in dealing with an English jury is not to lose time. Mere *finesse* they don't appreciate—go straight at the witness and at the point. Throw your cards on the table. It is a simple method, and I think a good method." Like the present Lord Chancellor, he had great confidence in juries. Mr. Edward Dicey once remarked to him, after he had become Lord Chief Justice, that if he (Dicey) were on his trial as an innocent man, he would sooner be tried by a judge than by a jury. Lord Russell's answer was that if Mr. Dicey knew as much of judges as he did, he would change his opinion; that juries, as a rule, took

a more commonsense view of a case than the judges. Charles Russell was no forensic or judicial humorist—he was far too much in earnest; but he had wit at command if he wanted it. “What’s the extreme penalty for bigamy, Russell?” said a brother barrister sitting by him in court. “Two mothers-in law,” replied Russell, promptly. On the hearing of a case in the Court for Crown Cases Reserved, he said: “I remember a case in which a very innocent remark of my own elicited the fact of a previous conviction. A prisoner was addressing the jury very effectively on his own behalf, but he spoke in a low voice, and, not hearing some of his observations, I said: ‘What did you say? What was your last sentence?’ ‘Six months, my Lord,’ he replied.”

Lord Russell was not a great reader—few men of action are; but he always carried with him two books. One was Locke on the Human Understanding and the other the *Imitatio Christi*. Locke appealed to his logical faculty—his passion for clearness of thought, directness, lucidity; Thomas a Kempis to the spiritual side of his nature, for he was through life a devout and loyal Catholic. One other thing he always carried in his bag, and that was a pack of cards—this also symbolical; for cards and horses were the chosen recreations of his life.

Intellectually the most striking and admirable quality in Lord Russell was his wide and clear vision. He took large views, which English lawyers so seldom do. In this he resembled his great countryman—Lord Cairns. His address on International Law at Saratoga is a good illustration; so is his address on Legal Education, delivered in Lincoln’s-inn Hall. Whatever the question he touched, he raised it to a higher platform. It was this quality which inspired the confidence reposed in him by foreign nations, and marked him out as a mediator in the disputes of nations.

Side by side with his professional avocations he was taking an active part in politics. He threw himself with characteristic ardor into the Home Rule controversy. He was a capital platform speaker, and he spoke in all parts of the country. No place was too remote or too small. He would travel from London after a busy day in the courts and spend the evening in exercising his fervid oratory in heated halls. The double strain of this professional work and politics was severe, and told upon his health. It explained what surprised many—his acceptance of a Lordship of Appeal on Lord Bowen’s death. A few months later, however, he found his true sphere. Lord Chief Justice Coleridge died, and Lord Russell succeeded to his place.

“What does the bar say of me?” he asked one of his friends soon after his elevation. “They are delighted to find your Lordship so gentle and patient,” was the reply. “I suppose,” retorted the great man, “those were the virtues that it was thought I should lack.” He was an ideal Chief

Justice—calm, impressive, and of indisputable authority. "To see him at his best," says one who knew him well, "was to see him presiding over a trial where great interests were at stake and passions ran high. Then and there he was a true Chief Justice: the majesty, of the law speaking through him in apt and dignified words." Such was the scene when Dr. Jameson and his associates were tried before him at bar for their deplorable raid. But such opportunities are rare. Nowadays the King's Bench is for the most part engaged in threading the labyrinth of statutory provisions—Local Government or Public Health, Revenue or Finance Acts—not in great judicial displays, or in laying down important principles of law.

One of the most honorable characteristics of our English criminal law—however Draconian its severity in the past—was and is its scrupulous fairness to prisoners. Witness, for instance, the rule that a confession procured either by promise or threat is not admissible. The reason is to guard against the possibility of an innocent person being from weakness seduced to accuse himself in hopes of obtaining thereby more favor, or for fear of meeting with worse punishment. In *Reg. v. Rose* (18 Cox C. C. 717) the prisoner was indicated for larceny of certain corn, chaff, sheep, poultry, and grass-seeds, the property of his master. The master, in the presence of a police constable, had asked the prisoner how he accounted for the number of the sheep on the farm being less than it should be, and the prisoner admitted that he had sold a lamb and a ewe to certain persons. The master then said: "You had better tell me all about the corn that is gone," adding it "would be better" for the prisoner to do so. On this the prisoner was convicted, but the Court for Crown Cases Reserved held that the conviction could not stand. The confession was not voluntary; it was, as Lord Russell said, preceded by an inducement held out by a person in authority. *Reg. v. Farborough* (73 L. T. Rep. 351; (1895) 2 Q. B. 484) is another illustration showing how carefully our criminal law is administered. The prisoner in this case was charged with stealing milk. After the jury had been absent some time, the judge sent for them, and, in answer to questions put by him, they said they had not agreed upon their verdict, but that they believed the only witness for the prosecution. The judge thereupon caused a verdict of "guilty" to be entered. But the Court for Crown Cases Reserved set it aside. "There might," as Lord Russell said, "have been many facts which would have justified the jury in drawing the inference that there was no felonious intent. The prisoner might have thought he was allowed to take the milk, or he might have intended to pay for it." It was entirely beyond the function of the judge to draw any inference of fact and thereby supply an essential part of the charge." If this were not so, any traveller who

took a bun from a railway buffet, meaning to pay for it, might find himself convicted of petty larceny.

In *Reg. v. Silverlock* (72 L. T. Rep. 298 ; 18 Cox C. C. 104) the prisoner had been convicted of obtaining money by false pretenses. He had advertised in the *Christian World* for a housekeeper, and had obtained from a lady, on the faith of his false pretenses, a deposit of £5. Application was made to quash the conviction on the ground that it was not stated in the indictment that the false pretense was made to any definite person ; but Lord Russell promptly overruled the technicality. "The advertisement is addressed," he said, "to all to whom knowledge of it may come." This is a most necessary principle to uphold in these days when newspaper advertisements are the favorite medium for frauds of all kinds.—*L. T.*

Gilbertian Lawyers.

The law and the drama have often been close allies.

Mr. W. S. Gilbert, Mr. Sydney Grundy, Mr. Herman Merivale, and Mr. Anthony Hope all practiced at the Bar before they wrote for the stage, and many another name might be added to suggest how much the drama owes to the law, but Mr. Gilbert's name alone is sufficient to indicate how deep the indebtedness is. Of all those who have deserted Themis for Thespis, none has ever turned his legal training to better account than has the author of "*Iolanthe*." Such dramatists as Mr. Sidney Grundy and Mr. Anthony Hope take no delight in weaving legal plots. That is an occupation which they wisely leave to playwrights with no knowledge of its dangers. But Mr. Gilbert, who knows the law well enough to know how to laugh at it, is never happier than when aiming his shafts of wit at the profession of which he was once a practising member.

Judges, barristers, solicitors—all three branches of the legal profession come in for their share of satire, in the Savoy operas :

This law is the true embodiment
Of everything that's excellent.
It has no kind of fault or flaw,
And I, my lords, embody the law.

So sings the Lord Chancellor in "*Iolanthe*," perhaps the best of all Mr. Gilbert's legal characters. Nobody but a legal dramatist could have created the interesting problem which confronts this "highly susceptible chancellor" who has fallen in love with a ward of court. "The feelings of a lord chancellor who is in love with a ward of court are not to be envied. What is his position? Can he give his own consent to his own marriage with his own ward? Can he marry his own ward without his own consent? And if he marries his own ward without his own consent, can he commit

himself for contempt of his own court? And if he commit himself for contempt of his own court can he appear by counsel before himself for arrest of his own judgment? Ah, my lords, it is indeed painful to have to sit upon a woolsack which is stuffed with such thorns as these." Not less amusing is the account given by this "constitutional guardian" of "Pretty young girls in chancery" of the "new and original plan" on which he determined to work "when he went to the bar as a very young man":

I'll never throw dust in a jurymen's eyes,

(Said I to myself, said I)

Or hoodwink a judge who is not otherwise,

(Said I to myself, said I)

Or assume that the witnesses summoned in force

In Exchequer, Queen's Bench, Common Pleas or Divorce,

Have perjured themselves as a matter of course,

(Said I to myself, said I)

It is to be noted, an "equity draughtsman" who thus determines to conduct common-law cases with scrupulous fairness, but this, perhaps, is to be counted as another proof of Mr. Gilbert's humor. The following verse is intended to apply to the bar as a whole:

E'er I go into court I will read my brief through,

(Said I to myself, said I)

And I'll never take work I'm unable to do,

(Said I to myself, said I)

My learned profession I'll never disgrace

By taking a fee with a grin on my face,

When I haven't been there to attend to the case,

(Said I to myself, said I)

Gilbertian judges are fond of indulging in reminiscences of their forensic days. Mr. Gilbert seldom aims his shafts of wit at the bench, though *Ko Ko*, in "The Mikado" includes in his long list of social offenders who never will be missed "That nisi prius nuisance, who just now is rather rife, the Judicial Humorist." He is accustomed to make his occupants of the bench the vehicles of his satire on the methods of the bar. Even the judge in "Trial by Jury"—"and a good judge too"—is chiefly occupied in explaining how he came to be a judge. He fell in love with "a rich attorney's elderly ugly daughter," who might, "very well pass for forty-three, in the dusk, with a light behind her," and that rich attorney promised he should "reach the reward of his pluck at the Bailey and Middlesex Sessions."

The rich attorney was good as his word,

The briefs came trooping gaily,

And every day my voice was heard

At the sessions or ancient Bailey.

All thieves who could my fees afford,

Relied on my orations,

And many a burglar I've restored

To his friends and his relations

Members of the bar figure but little in Mr. Gilbert's plays. Almost the only barrister his wit and fancy have created is Sir Bailey Baire, Q. C., M. P. in "Utopia" of whom Princess Zara sings :

A complicated gentleman, allow me to present,
Of all the arts and faculties the true embodiment,
He's a great arithmetician who can demonstrate with ease,
That two and two are three, or five, or anything you please ;
An eminent logician who can make it clear to you
That black is white—when looked at from the proper point of view ;
A marvelous philologist who'll undertake to show
That "yes" is but another and a neater form of "no."

This description of his marvelous powers is evidently not displeasing to the honorable and learned gentleman, for he is candid enough to add :

All preconceived ideas on any subject I can scout,
And demonstrate beyond all possibility of doubt,
That whether you're an honest man or whether you're a thief
Depends on whose solicitor has given me a brief.

Solicitors take a legitimate pride in the fact that Sir Henry Fowler was the first practising member of their branch of the profession to become a Cabinet Minister. Long before, however, Sir Henry Fowler became Secretary of State for India, the author of "H. M. S. Pinafore," perceived how excellent a stepping-stone to the post of First Lord of the Admiralty was a stool in a solicitor's office. Sir Joseph Porter, who, while an office boy, "polished up the handle of the big front door," contrived to make his mark even as a junior clerk in an attorney's office.

In serving writs I made such a name,
That an articled clerk I soon became ;
I wore clean collars and a brand new suit,
For the pass examination at the Institute.
And that pass examination did so well for me,
That now I am the ruler of the Queen's avenue !

Two other members of the solicitor branch of the profession have been admitted at the Savoy. There is the notary in "The Sorcerer" who, "dry and snuffy, deaf and slow" is "everything that girls detest," and there is the more attractive notary in "The Grand Duke" who sings of the Prince who "passed an Act, short and compact, which may be briefly stated."

Unlike the complicated laws
A parliamentary draughtsman draws,
It may be briefly stated.

One of the best pieces of satire in Mr. Gilbert's play is to be found in "The Mountebanks," where, in singularly ingenious rhymes he explains why

Ophelia ought to have instituted a breach of promise action against the melancholy Dane.

Ophelia to her sex was a disgrace,
Whom nobody could feel compassion for.
Ophelia should have gone to Ely Place,
To consult an eminent solicitor.

—L. J.

REVIEWS.

A Code of the Law of Compensation, under the Lands Clauses Acts, and other Statutes relating to the compulsory purchase or injurious affecting of land. By SYLVAIN MAYER, B. A. (LOND.), PH. D., Barrister-at-Law. LONDON: Sweet and Maxwell, Limited, 3 Chancery Lane, W. C. 1903. Roy. 8 vo. Pages lviii and 853. Price 38s.

THE law of compensation has of late attracted considerable attention of the public and the profession in the City of Bombay owing to the working of the City of Bombay Improvement Act (Bombay Act II of 1898). This Act has already furnished a model to the Government of Mysore, who have framed an Act for the improvement of the City of Bangalore; and the Government of Bengal have in contemplation an enactment, on the lines of the Bombay Act, for the improvement of the City of Calcutta. Before the passing of this enactment, the acquisition of lands was in the City of Bombay, as it is now in the rest of India, compensated for in accordance with the provisions of the Land Acquisition Act (I of 1894). But the decided cases on this latter Act are very few: while those under the City of Bombay Improvement Act are fewer still, for as remarked by the present Chief Justice "the provision in favour of appeal to the High Court has hitherto proved illusory" (5 Bom. L. R., p. 438). In this state of affairs one has necessarily to seek the aid of precedents afforded by case-law in England, under various statutes relating to the compulsory purchase of land: and he can scarcely light upon any book better equipped than Dr. Mayer's work on the Law of Compensation. The intricacies and refinements of the law of compensation are rarely equalled and certainly not surpassed by any branch of English law. In India that law is mostly confined to the dry terminology of a limited number of sections in the two enactments referred to above; whereas in England, the law has stood the test of over half-a-century and has accumulated a wealth of precedents for an equally long period of time. The work under review presents both of these in an admirable form. Part I treats of the Lands Clauses Acts, Railway Clauses Acts, Water Works and Gas Works Act,

Local Government Acts, Public Health Acts and other Miscellaneous Acts pertaining to the subject. Every section of these statutes is very carefully annotated. The annotations are throughout enriched by plentiful extracts from judgments: and embrace every reported English case that has any bearing upon the subject. The practical portion of the work begins with its numerous appendices. The embody Precedents 55 in number, the Arbitration Act, the Settled Land Acts, Rules of the Supreme Court for motions and other applications, Supreme Court rules as to lodgment of funds in Court, Titles to originating summonses and petitions under the Lands Clauses Consolidation Acts, 1845-1869, Crown office rules for mandamus and Order 53 of the rules of the Supreme Court, Specimens (24) of valuations made for the purpose of assessing compensation, valuation tables (8); and Report of Select Committee of House of Lords on betterment, with specimens of betterment clauses. Thus, this volume contains all available information on the practice and the law of compensation, put in an orderly arrangement; and we can say with great pleasure that the profession and the public concerned will find this treatise an extremely useful publication. The index at the end is very detailed and exhaustive and adds greatly to the utility of this valuable treatise as a work of reference.

The Principles of Hindu Law. By JOGENDRA CHUNDER GHOSE, M. A., B. L., Pleader of the Calcutta High Court. CALCUTTA: S. O. Auddy & Co., 58 & 12 Wellington Street. 1903. Demi 8 vo. Pages liii and 794. Price Rs. 10.

A WORK on Hindu Law compiled from the Sanskrit texts as also from the decided cases was as yet a desideratum; and the credit of supplying it in an eminent degree deservedly belongs to Mr. J. C. Ghose, a well-known pleader of the Calcutta High Court. His *modus operandi* is briefly this. On each subject he has collected the texts of Manu, Gautama, Baudhayana, Apastamba, Vishnu, Yajnavalkya, Narada, Vrihaspati and Parasara, as found in the texts as printed in Europe and India and he has given the translations as found in the Sacred Books of the East. Whenever he found the translations not satisfactory or where the texts were not translated at all, the author has placed his own translations. He has also collected the texts of Sankha Likhita, Harita, Katyayana, Devala, Vyas and others. Thus, the learned author can justly claim to have brought together all the texts now extant of the Vedas, Smritis and Puranas on the subjects dealt with in the book. The collection of texts is followed by a detailed statement of the rules of law, as established by the decisions and the reasons given in them. This part of the book is refreshed with a healthy criticism on some of the judgments of our

Courts. The learned author has at various places combated the views of some of the writers on Hindu law and has ably shown them to be not worthy of implicit acceptance. The book is divided into eleven chapters, treating of Hindu Jurisprudence and Sources of Hindu Law, Inheritance, Rights of females, the joint Hindu family, Adoption, Marriage, Gifts, Religious institutions and endowments, Impartible estates, Custom, Change of domicile or religion &c. and Shudraas. These titles occupy the whole subject of Hindu Law. We have examined parts of the book and are glad to be able to say that this is a most original and critical work on Hindu Law. It is the only work which combines the effect of Sanskrit texts with the rules deduced from the Judge-made law. Mr. J. C. Ghose is an accomplished Sanskrit scholar and a well-known lawyer : and every page of this book bears testimony to his scholarship and versatility.

Commercial Law. Elementary Commercial class-books. By J. E. C. MUNRO, LL. M., Barrister-at-Law. Second edition, by J. G. PRABH, of the Inner Temple, Barrister-at-Law. LONDON : Macmillan and Co., Limited. 1903. Cr. 8 vo. Pages x and 194. Price 3s. 6d.

THE main purpose of this hand-book is to give an elementary knowledge of Commercial law to the merchant. It is, therefore, written in a "lay" language for the better comprehension of lay people. The book is throughout free from the citation of statutes and decided cases. It is divided into five parts. Part I treats of mercantile persons and mercantile property. Part II is designed to acquaint the reader with the law of formation of contract, capacity of parties to contract, the form of and consideration for contracts, the legality of the agreement, possibility of performance, effects of mistake, misrepresentation or fraud, the assignment of contracts, and performance, breach and discharge of contracts. Part III concerns itself with the leading commercial contracts, viz., partnership, principal and agent, the sale of goods, insurance, guarantee, charterparties, bills of lading, bills, notes, cheques and I. O. U.s. Part IV deals with the law of bankruptcy : and Part V with the application of the law. Thus, this book contains every thing which a merchant ought to know, and the knowledge of which is sure to guide him aright whenever he is unexpectedly called upon to meet a sudden contingency. This manual will also be useful to the students of law. He will find there all the cumbersome principles of law presented in a plain language, easy to understand, easy to remember and easy to reproduce. The questions at the end of the book will be of great service to him in testing his progress, and in anticipating the tests which the examiner expects of him. The learned author has a word of caution to his merchant reader warning him not to pride himself on being a pundit in commercial

law because he has mastered an elementary treatise; he cannot of course dispense with the aid of his legal advisers: but an elementary knowledge of commercial law will save him the trouble and expense of peeping into a lawyer's office at every little turn of business.

Parsi Law. By FRAMJI A. RANA, B. A., LL. B., Vakil, High Court. BOMBAY: The Examiner Press. 1902. Demi 8vo. Pages 78 and cvii. Price Rs. 3.

THIS is, so far as we are aware, the first attempt to put the Parsi Law, statutory and case-made, in a neat form. The only book that existed hitherto upon the subject was the Parsee Acts, edited by Mr. Sorabjee Shapurjee Bengalee, published at the expense of the Parsee Law Association, and printed as far back as 1868. This book contained the bare texts of the Acts; and is not available for some years past. The present book is a considerable advance upon Mr. Bengali's book. It is divided into two parts. Part I treats of Inheritance and Succession. The Parsi Intestate Succession Act (XXI of 1865) with commentaries finds a place here and it is followed by a summary of the Indian Succession Act (X of 1865). Part II is occupied by the Parsi Marriage and Divorce Act (XV of 1865) with commentaries, Rules and Orders under Parsi Marriage and Divorce Act, and Law as to bridal presents amongst Parsis. In the appendices are reproduced Parsi Chattels Real Act (IX of 1837), Indian Succession Act (X of 1865), Rules and Regulations for Parsi Chief Matrimonial Court in Bombay Presidency, and Table of fees. Looking through the book we find that the annotations are very carefully prepared, are full and are brought quite upto date. The book will, no doubt, be welcomed by the profession as a handy book on Parsi Law.

Principles of Equity. By M. L. AGARWALLA, B. Sc., LL. B (Lond.), of Gray's Inn, Barrister-at-Law; Advocate of the High Court, N. W. P. ALLAHABAD: Ram Narain Lal, Katra Road. 1903. Cr. 8 vo. Pages xix, 318 and xxiv. Price Rs. 3.

THIS book is written specially for the use of students. It deals with the Maxims of Equity, Mortgages, Specific Reliefs, Trusts and Administration of the Estate of Deceased persons. The writer has adopted the texts of the Acts of Indian legislature pertaining to the subject as the ground-work of this manual. They are welded into a continuous whole by means of decided cases English and Indian. For a detailed study and grasp of the law study of larger works will be necessary. But when a student has once mastered his subject, he will find this book a helpful companion for the purposes of revising his studies, when his examination is at hand. This book is very concise and handy and has the qualification of being well-printed.

THE
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INTEREST IN A MORTGAGE DECREE.

IT is now settled law that in a mortgage suit the mortgagee is entitled to interest at the *contract rate* from date of suit till date of decree. The further question whether subsequent interest at the same rate from date of decree to date of payment or realization is claimable by him *as of right* or is only *discretionary* with the Court, does not seem to be covered by any authoritative ruling of our High Court. The point being of frequent occurrence in our law Courts, it will, it is believed, not be amiss to draw attention to it in this Journal.

The answer depends on a correct interpretation of section 86 (section 88 being identical in terms in this respect) of the Transfer of Property Act. The section enacts that

“The Court shall make a decree ordering that an account be taken of what will be due to the plaintiff for principal and interest on the mortgage, and for his costs of the suit, if any, awarded to him, on the day next hereinafter referred to, or declaring the amount so due at the date of such decree,

“and ordering that, upon the defendant paying to the plaintiff or into Court the amount so due, on a day within six months from the date of declaring in Court the amount so due, to be fixed by the Court, the plaintiff &c. &c.”

As just stated, there is no direct Bombay ruling on the point. The case of *Chaturbhai v. Hurbhamji* (20 Bombay, 744) simply says that the mortgagee is entitled to interest at the contract rate up to date of decree, and the Court has no discretion to refuse to award such interest, but is wholly silent as to future interest.

The Calcutta High Court has laid down the following rules in the case of *Surya Narain Singh v. Jogendra Narain* (20 Calcutta, 360):—

"The terms of section 86 of the Transfer of Property Act exclude the discretion conferred on the Court by section 209 of the Civil Procedure Code in cases coming under the Transfer of Property Act.

"Section 86 of the Transfer of Property Act binds the Court to give a decree at the rate of interest provided by the mortgage if it be a rate to which no valid legal objection can be taken; that interest must be so computed down to the day fixed by the Court, according to the terms of the 2nd paragraph of the section, that is the day being one within six months from declaring in Court the amount due. The amount to be declared due is the amount due for principal and interest on the mortgage, including interest at the rate provided by the mortgage deed up to the day so fixed; it is the same whether it be ascertained on an account being taken by the order of the Court, or be ascertained by the Court itself."

Rule 555 in Belchambers' Rules and Orders runs as follows (24 Calcutta, 776):—"Unless otherwise ordered (in the decree!) interest shall be computed on a mortgage, at the rate mentioned therein, until the end of six months from the date of the decree or until the end of any further period to which the time may be enlarged. Such interest shall be added to the principal, and thereafter interest shall be computed on the aggregate amount at the rate of 6 per cent per annum."

The Calcutta practice thus seems to be to allow interest at the contract rate until the decree is made absolute and thereafter at 6 per cent until realization.

The same practice appears to prevail in Madras: Interest at the contract rate should be decreed for the period allowed for payment by the mortgagor, and subsequent interest should be decreed at 6 per cent only (*Subbaraya Ponnusami*, 21 Madras, 364); and probably in Allahabad also (*Bakar v. Udit Narayan*, 21 All., 361).

If this practice is correct and accurate law, it is submitted with the greatest deference that it must in a measure work harshly on the mortgagor, failing as it does to take adequate notice of his interests also. Reverting to its wording, section 86, it will be seen, directs the Court to pass a decree ordering that, upon the defendant paying into Court the amount so due..... the plaintiff shall deliver &c. And, according to the above *Surya Narayan's* case, that amount, whether ascertained at the date of the decree or subsequently, must include the principal, and interest up to the day fixed by the Court for redemption, and costs. If the amount so ascertained is not paid in full by the mortgagor, the Court has no power to accept a shorter payment as a valid discharge of the decree, or to refuse on that ground to make the decree absolute. Now it may happen that the mortgagor offers pay-

ment on the very next day of the passing of the decree. In that case there is no valid reason to insist upon his paying future interest which has not even begun to run. Yet the above ruling leaves no option to the Court to adjudge the smaller payment as a full discharge of the decree.

Then, also, the expediency and justice of tying down the Court's hands, by an affirmative rule of the nature cited above, to award compound interest on the principal after the decree is made absolute, may fairly be doubted, at least in cases where the delay in the realization of the money is not attributable to any act or omission on the part of the judgment-debtor. It is common experience that delays in a court-sale, especially when the decree is sent to the Collector for execution, are not unfrequently caused by the creditor himself or by any real or supposed difficulties which the officer entrusted with the sale experiences in the course of the proceedings. Often, realization is frustrated by the purchaser not paying in the price within the prescribed period, or by reason of the sale being altogether set aside. To charge the mortgagor with interest in such cases is to inflict on him an amount of punishment he does not justly merit and is unable to bear. The Calcutta ruling and practice, therefore, are, to my humble thinking, not well adapted for acceptance without proper qualifications and limitations.

The question, then, is whether section 86 permits a modified and (so to say) a more equitable construction. In the case of *Maharajah of Bharatpur v. Ram Kanno* (L. R. 28 I. A. 35, s. c. 23 All., 181) their Lordships of the Privy Council, "expressing their concurrence with the Courts of Calcutta and Madras and the ultimate decision (21 All., 61) of the Court of Allahabad", held merely that section 88 must not be construed (so the head note runs) as precluding interest upon a mortgage after the day fixed for payment of the amount due thereunder into Court. So it is diffidently apprehended that the question propounded in this note is still an open question.

Turning, then, to the section it must be admitted at once that the expression "*on the date next hereinafter referred to*" in the first paragraph is singularly perplexing. It may mean either the *day* within six months fixed by the Court, or the *date* of declaring in Court the amount so due. Grammatical and natural sense favours the former meaning, having regard to the use of the identical word *day* in both paragraphs, but renders the provisions of the section more or less incongruous and anomalous. The section provides two forms of decree under it. The decree may order that an account be taken of what will be due...on the day next hereinafter referred to, in which case interest at the contract rate will have to be calculated up to that day at least; or may itself declare the amount so due at the date of such decree in which case interest will have to be calculated up to that date.

only, as otherwise the words "at the date of such decree" will be meaningless. It will indeed be an unpleasant revelation to the mortgagee to be told that if the decree is put in one form he will get a lesser amount of interest than if it were put in the other form. To shut out this startling anomaly the case of *Surya Narayan* (cited above) has supplemented the latter form by reading into it the words "including interest at the rate provided by the mortgage deed up to the day so fixed". This, it will be readily conceded, though perhaps perfectly correct law, is doing violation to the grammatical and natural sense of the words used. Thus, pure grammatical interpretation fails to give us sound law.

The second meaning is calculated to secure a perfect agreement between the two forms, without doing any greater violence to the rules of grammar than is involved in its alternative; we have only to read "the *day* next hereinafter referred" to mean "the *date* of declaring in Court". So read, the section is fully consistent. The Court may pass a decree directing accounts to be taken in which case interest will be calculated up to the day on which the price of redemption is ascertained and declared, or declare that price in the decree itself in which case interest will run up to the decree-date only. In either case the essential and limiting date of irreducible interest at contract rate is the date of declaring the amount.

This view derives considerable support from Form of Decree, No. 128, in Schedule IV to the Civil Procedure Code. It says "The Registrar do take an account of what is due...for principal and interest on the mortgage...mentioned in the plaint, and...do declare in Court on the day of what he shall find to be due for principal and interest as aforesaid...And upon the defendant paying into Court what shall be certified to be due to the plaintiff for principal and interest as aforesaid together with the said costs, within six months from the date of declaring in Court the amount so due, it is ordered &c". Here there is no ambiguity that the interest at the contract rate is to be calculated up to the date of certifying the amount, there being no direction that subsequent interest at the same rate should be included in the amount. It will be noted that section 87 of the Transfer of Property Act, whilst making some verbal alteration in the next following Form No 129, has left this Form untouched. It may therefore well be concluded that the Legislature thought the Form embodied a fairly correct expression of its object and meaning underlying section 86.

The object of fixing a day for payment by the mortgagor is for the purpose of assigning a definite time at which the mortgagor's right of redemption is to cease and the mortgagee's right to foreclose or sell is to attach, and not for the purpose of staying the payment of interest (28 L. A.,

at page 45.), and—if such addition is permissible—also not for the purpose of increasing interest. The declaring of the amount is as essential a step in a mortgage proceeding as the fixing of the day, in order to certify to the parties the exact amount of redemption. And it is only fair that the mortgagor should not be placed at a disadvantage by inclusion of anticipatory future interest in that amount. The amount should rise up in proportion to, and not irrespective of, the delay in payment, and according to the equities from time to time existing between the parties. If this reasoning is correct, the most appropriate time at which interest at contract rate *as such* should stop would be the date of declaring the amount.

Then, again, this view entails no loss of interest on the mortgagee over and about what every other holder of a money decree is subjected to by the law; and he is after all a money decree-holder only. As such, he will be entitled to the benefit of section 209, Civil Procedure Code. That section is inoperative so far and only so far as it is superseded by the special provisions of the Act, but must still regulate all matters beyond those provisions. Section 86, it has been already stated, does not preclude further interest which is thus still free to be dealt with under s. 209 of the Code. So dealing with it, the Court may award it at such rate up to the contract rate and for such period as the particular circumstances may require.

Where the day for payment is enlarged from time to time, sections 87 and 93 empower the Court to impose such terms as it thinks fit. One of the principal of such terms will generally have reference to interest. This, again, shows that the Legislature did not intend to lay down a hard and fast rule about future interest, but left the matter to be adjusted from time to time according to the exigencies of each individual case.

To conclude: The award of interest at the contract rate, if not open to any valid legal objection, is obligatory up to the date of the decree or of declaring the amount in Court, and is discretionary thereafter, the discretion being a judicial discretion to be exercised on proper judicial grounds.

H. S. P.

RECENT ENGLISH CASES.

COPYRIGHT—*Photograph*—*Photograph* “made for or on behalf of any other person for a good or a valuable consideration”—*Photograph taken at request of sitter*—*Fine Arts Copyright Act, 1862* (25 & 26 Vict. c. 68), s. 1. Where a photographer takes a photograph at the request of the sitter upon the terms that the sitter will pay for taking it, or under circumstances which

raise an implied promise to pay on the sitter's part, the photograph is "made or executed for or on behalf of any other person for a good or a valuable consideration" within the meaning of s. 1 of the Fine Arts Copyright Act, 1862, and the copyright in the photograph is in the sitter, notwithstanding that the property in the negative, in the absence of any agreement for its purchase, may remain in the photographer. *Boucas v. Cooke* (1903, 2 K. B. 227).

INSURANCE, LIFE—*Sale of life policy—Mistake—Death of assured before contract—Subsequent knowledge by one party—Assignment—Rescission after completion—Contract—Vendor and purchaser.* A contract for the sale of a life policy was entered into by both parties in the belief that the assured was alive, and the contract was completed by assignment. Between the dates of the contract and the assignment the purchaser received information which led him to believe that at the date of the contract the assured was dead, which after the date of the assignment was ascertained to have been the fact, but the purchaser never disclosed his information to the vendor:—*Held*, that the vendor was entitled to have the transaction set aside notwithstanding that it had been completed by assignment. *Scott v. Coulson* (1903, 2 Ch. 249).

LIGHT AND AIR—*Ancient lights—Injunction or damages—Future injury—Oppression—Extortion—Jurisdiction—Lord Cairns' Act (21 & 22 Vict. c. 27), s. 2.* The plaintiffs brought an action for an injunction to restrain the defendant from erecting a building so as to darken their ancient lights. The defendant alleged that the plaintiffs had bought their house merely with a view to extorting money from any person who tried to build on the defendant's land; that the action was therefore oppressive; that the injury (if any) would be trifling; and that it was a case for damages, and not for an injunction:—*Held*, that the plaintiffs' windows were ancient lights, and would be materially interfered with by the defendant's proposed buildings; that it was not extortion or oppression on the part of the owner of an easement to ask a price which the property for exceptional reasons in fact commanded; and that an injunction ought to be granted. *Cowper v. Laidler* (1903, 2 Ch. 337).

MORTGAGE—*Redemption, Equity of—"Once a mortgage always a mortgage"—Olog on redemption—Mortgage of shares in company—Stipulation that mortgagee shall be employed as broker by the company.* A holder of shares in a tea company mortgaged the shares to secure a loan and agreed to use his best endeavours to secure that "always thereafter" the mortgagee should have the sale of all the company's teas as broker, and in the event of any of the company's teas being sold otherwise than through the mortgagee to pay him the amount of the commission he would have earned if the teas

had been sold through him. The mortgage was paid off and the company afterwards changed their broker. The quondam mortgagee having brought an action against the shareholder for breach of the above agreement:—*Held*, by Lords Macnaghten, Davey, and Robertson, Lords Shand and Lindley dissenting, that the case fell within the principle of *Browne v. Ryan*, [1901] 2 I. R. 653, approved by this House in *Noakes v. Rice*, [1902] A. C. 24, that the agreement was not binding, and that the action could not be maintained. *Bradley v. Carritt* (1903, A. C. 253).

NEGLIGENCE—*Action for personal injuries*—*Invitation to travel on engine*—*Duty to take reasonable care under the circumstances*—*Liability for negligence of servants*. The defendant was contractor for making a tunnel for a tube railway, and had constructed, for the purpose of carrying out the work, a temporary line on which an electric engine ran. This engine was used to draw trucks containing the excavated material to a spot where it could be brought to the surface. It was not fitted for passengers, and the defendant had directed that no one should be allowed to ride on it but the driver and a guard. It had, however, been used to carry officials in the employment of the defendant and of the railway company, with the knowledge and concurrence of the defendant's representative. The plaintiff was an inspector of works appointed by the engineer of the railway, and he accepted from the defendant's timekeeper, who was riding on the engine, an invitation to be conveyed by it to his destination. An accident happened while the plaintiff was on the engine, and he sustained injuries. In an action to recover damages from the defendant in respect of these injuries, the jury found that the plaintiff was on the engine for his own convenience, but with the permission of the defendant's representative, and that the accident was due to the negligence of the defendant's servants:—*Held*, that the defendant must be taken, through his representative, to have permitted the plaintiff to ride on the engine, and that his liability was that of a person who undertakes the carriage of another gratuitously; that the duty in such a case is that the care exercised must be reasonable under the circumstances; that there was evidence of such a failure of due care on the part of the defendant's servants as would make him responsible for damage arising therefrom; and that the plaintiff was entitled to judgment. *Harris v. Perry & Co.* (1903, 2 K. B. 219).

PARTNERSHIP—*Liability of estate of deceased partner*—*Action for goods sold and delivered*—*Goods ordered in lifetime of partner but delivered after his death*—“*Debt or obligation*”—*Partnership Act, 1890* (53 & 54 Vict. c. 39), s. 9. The estate of a deceased partner is not liable in an action for the price of goods sold and delivered where the order for the goods is given in the lifetime of the deceased partner but delivery does not take place till after his death. *Bagel v. Miller* (1903, 2 K. B. 242).

Will—Ademption—Charitable legacy—Gift to endowment fund—Hospital—Particular purpose. A legacy to the trustees of the endowment fund of a hospital is a legacy for a particular purpose, and is therefore adeemed by a gift of the same amount to the same trustees in the testator's lifetime. *In re Corbett. Corbett v. Lord Cobham* (1903, 2 Ch. 326).

—*Issue—Gift over—Construction.* In a gift over on failure of the line of one child to "other of my children and their issue," the word issue must receive its plain and ordinary meaning, and not be restricted to the issue of children dying in the lifetime of the testatrix unless the rest of the will plainly requires it. The gift over in this case was subject to the condition that those only took under it who were also beneficiaries under the original gift, in which original gift issue was restricted as above by the immediate context:—*Held*, that that was insufficient by itself to control the meaning of the word used in a new connection. Accordingly the appellants were entitled to share in the said gift over as issue of a child other than the child whose line had failed; and this notwithstanding that under the original gift they had taken in substitution for their mother. *Edgvean v. Archer. In re Harriett Brooks, Deceased*, (1903, A. C. 379).

GLEANINGS.

The Doctrine of Ultra Vires.

THE theory which underlies the law of public and private corporations is not new. It can be traced back through the period of modern and mediæval European history to the time when imperial Rome, from her seat by the Tiber, ruled the world. But while the theory is almost as old as civilization itself, yet, corporations as they exist today are purely the result of modern enterprise and progress; and the law governing this modern product through all the stages from the creation of its corporate life, to its corporate death, is naturally the product of modern legislation.

And throughout the voluminous mass of law relating to this subject, in all its manifold ramifications, there can be found no questions more important or more difficult of solution than those arising in connection with the *ultra vires* acts and contracts of a corporation.

In order that a clearer conception may be had of the policy of the law in its treatment of corporate bodies who have overstepped the limits imposed by law within which they may act, it is advisable here to consider briefly the leading characteristics of the normal body.

A corporation is a collection of individuals authorized by special charter or general enabling act to assume corporate powers. Among those powers so

granted is the capacity of perpetual succession—not immortality in its commonly accepted sense, but the *power* to exist until such existence is determined by the expiration of the time prescribed by statute, unaffected by the death of its members; the capacity to act as one person in transacting the business of the corporation; the power to sue and be sued, to purchase such real and personal property as may be necessary or convenient for it to hold, and to dispose of the same as it shall see fit; to have a name by which it may be identified; to have a common seal; to make by-laws; to remove its officers, and under certain circumstances, its members.

A corporation has no inherent powers—it is endowed with no inalienable rights. It is but a creature of the law, and its rights and powers are determined and limited by the instrument of its creation—its charter.

But “power” in the sense here used is not *synonymous* with capacity or ability. A corporation may have the *ability* to perform, through its officers and agents, certain acts, though it may not have the legal right to do so. And it is this ability—this capacity to do wrong—that has necessitated the engrafting on English and American jurisprudence of that “most disturbing element in the legal system”—the doctrine of *ultra vires*.

The significance of the term “*ultra vires*,” the origin and development of the doctrine of *ultra vires*, its application to private corporations under varying circumstances and conditions, and existing remedies, will be considered under the following subdivisions:

- I. *Ultra vires*, its significance and scope.
- II. The origin and development of the doctrine.
- III. Its application to the modern business corporation as related to
 - (a) Acts beyond general scope of corporate powers;
 - (b) Acts apparently within general scope of corporate powers;
 - (c) Absence of some prescribed formality;
 - (d) Contracts *ultra vires* as to a part only;
 - (e) Liability for torts committed in prosecution of an *ultra vires* act;
 - (f) Disaffirmance after part performance;
 - (g) The doctrine of estoppel.
- IV. Its application to corporations charged with a public duty.
- V. The remedy existing in
 - (a) The state;
 - (b) The stockholders;
 - (c) Third persons.

ULTRA VIRES—ITS SIGNIFICANCE AND SCOPE.

The term “*ultra vires*,” literally translated, means “beyond the power;” and, as applied to the acts and contracts of a corporation, it signifies that

such corporation has exceeded its powers, express or implied, in attempting to perform such act, or enter into such contract.

The latitude within which a corporate body may lawfully act is circumscribed by the terms of its charter. It may exercise only those powers which the legislature expressly delegates to it, coupled with such other powers as impliedly, because necessarily, attach to the exercise of the peculiar functions of the corporations.

Whether such acts and contracts are void *ab initio*, or merely voidable, what persons will be allowed to object, and under what circumstances objection will be allowed, are questions upon which the courts of the different states are at variance. And this divergence of opinion is not surprising when we consider that corporations are essentially the product of the last fifty years, and that being of so recent an origin, the law governing and regulating them must necessarily be in a formative state—crude and unsettled.

ORIGIN AND DEVELOPMENT OF THE DOCTRINE.

The necessity for adjudication on the subject of the *ultra vires* acts and contracts of a corporation first arose in connection with public corporations, and it was, at an early date, settled that a municipality could not be bound by contracts made by its officers and agents beyond the scope of the powers conferred by legislative act on such municipal corporation.

The doctrine in its inception rests upon sound reasoning. Public corporations are but component parts of the machinery of the general government. Counties, towns and cities are given corporate powers only that they may be enabled to perform with greater facility the public duties required of them. The whole body of the people embraced within the limits of such municipality are the corporators. Like a private corporation, they act through officers who are the agents of the entire people. The limits within which these corporations by their officers or agents, may act, are carefully prescribed by the legislature granting the charter, and the public is bound to know and observe these limitations. *Lyddy v. Long Island City*, 104 N. Y. 218. The stability of government depends on the establishment and enforcement of strict rules governing the acts and doings of such municipal bodies, and their absence must inevitably result in disintegration and governmental overthrow.

The object of the doctrine as first laid down in connection with municipal corporations, was to protect and safeguard the rights of the public, by limiting the sphere of action of those chosen to exercise the corporate powers on behalf of the public. The reason for the rule ceasing to exist when applied to private corporations, it would seem logical that the rule should cease to exist also. But upon the rise and growth of private corporations, composed

of private individuals and formed for purposes of private emolument, the courts still continue to apply the rule when called upon to adjudicate on questions concerning the *ultra vires* acts of private corporations. And this, though no rights of the public were endangered, and though it was a matter lying entirely between the state and the offending corporation.

ITS APPLICATION TO THE MODERN BUSINESS CORPORATION AS RELATED TO

(a) Acts beyond the general scope of corporate powers:

The general trend of opinion of the English, as well as of the American, courts is to the effect that where a corporation performs acts, or enters into contracts either expressly forbidden, or wholly unauthorized, by legislative act, such act or contract is void *ab initio*, is not susceptible of ratification, and no action can be maintained upon it. *Coleman v. Eastern Counties Ry. Co.*, 10 Beav. 1; *East Anglian Ry. Co. v. Eastern Counties Ry. Co.*, 11 C. B. 775; *Ashbury Ry. Carriage & Iron Co. v. Riche, L. R.*, 7 H. L. 653; *Thomas v. Railroad Co.*, 101 U. S. 71; *Central Trans. Co. v. Pullman Palace Car Co.*, 139 U. S. 24; *Dresser v. Traders' Nat'l Bank*, 165 Mass. 120; *Oregon Ry. & Nav. Co. v. Oregonian Ry. Co. Ltd.*, 130 U. S. 1.

Gray, C. J. in *Davis v. Old Colony R. R. Co.*, 131 Mass. 258, says:

"A corporation has power to do such business only as it is authorized by its act of incorporation to do, and no other. It is not held out by the government, nor by the stockholders, as authorized to make contracts which are beyond the purposes and scope of its charter. It is not vested with all the capacities of a natural person, or of an ordinary partnership, but with such only as its charter confers. If it exceeds its chartered powers, not only may the government take away its charter, but those who have subscribed to its stock may avoid any contract made by the corporation in clear excess of its powers. If it makes a contract manifestly beyond the powers conferred by its charter, and therefore unlawful, a court of chancery, on the application of a stockholder, will restrain the corporation from carrying out the contract; and a court of common law will sustain no action on the contract against the corporation."

Such questions as those arising in the cases above cited present little difficulty to the courts; and they are practically unanimous in holding that where the acts of a corporation are obviously beyond its powers, such acts are void.

Questions of greater intricacy present themselves when courts are called upon to apply the doctrine to

(b) Acts apparently within the general scope of corporate powers:

Mr. Chief Justice Sawyer, in a very able opinion delivered in *Miners' Ditch Co. v. Zellerbach*, 37 Cal. 543, says:

"The term '*ultra vires*' whether with strict propriety or not, is also used in different senses. An act is said to be *ultra vires* when it is not within the scope of the powers of the corporation to perform it under any circumstances, or for any purpose. An act is also, sometimes, said to be *ultra vires* with reference to the rights of certain parties, when the corporation is not authorized to perform it without their consent; or with reference to some specific purpose, when it is not authorized to perform it for that purpose, although fully within the scope of the general powers of the corporation, with the consent of the parties interested, or for some other purpose. And the rights of strangers dealing with corporations may vary, according as the act is *ultra vires* in one, or the other, of these senses. All these distinctions must be constantly borne in mind in considering a question arising out of dealings with a corporation. When an act is *ultra vires* in the first sense mentioned, it is generally, if not always, void in toto, and the corporation may avail itself of the plea. But when it is *ultra vires* in the second sense, the right of the corporation to avail itself of the plea will depend upon the circumstances of the case. * * * Strangers are presumed to know the law of the land, and they are bound, when dealing with corporations, to know the powers conferred by their charter. These are open to their inspection, and it is easy to determine whether the act is within the scope of the general powers conferred for that purpose. But they have no access to the private papers of the corporation, or to the motives which govern directors and stockholders, and no means of knowing the purposes for which an act, that may be lawful for some purposes, is done. The very fact that the appointed officers of the corporation assume to do an act in the apparent performance of their duties, which they are authorized to perform for the lawful purposes of the corporation, is a representation to those dealing with them that the act performed is for a proper purpose. And such is the presumption of the law, and upon this presumption, strangers having no notice in fact of the unlawful purpose are entitled to rely. * * * Upon any other principle there would be no safety in dealing with corporations, and the business operations of of these institutions would be greatly crippled, while the interests of the stockholders and the public, and their general usefulness, would be seriously impaired. The officers are appointed by the corporation, and if any loss results to strangers dealing with the corporation from their misrepresentation in matters within the general scope of their duties, it should fall upon the corporation, which is responsible for their appointment, rather than upon parties who have no other means of ascertaining the facts, and must rely upon their assurances, or not deal with the corporation at all."

Many of the courts have taken the position outlined by Chief Justice Sawyer, namely, that the plea of *ultra vires* will not be allowed to prevail where the contract sought to be enforced is one within the general powers of the corporation, but which has been rendered *ultra vires* through neglect to comply with some prerequisite thereto. *Miners' Ditch Co. v. Zellerbach*, 37 Cal. 543; *Rock River Bank v. Sherwood*, 10 Wis. 230; *Fleckner v. Bank of U. S.*, 8 Wheat. 338; *Silver Lake Bank v. North*, 4 Johns. (Oh.) 370; *Humphrey v. Patrons' Mer. Assn.*, 50 Ia. 607; *Alward v. Holmes*, 10 A. N. Cas. (N. Y.) 96; *Little v. O'Brien*, 9 Mass. 423.

Very much to the same effect are the decisions as to contracts *ultra vires* by reason of the

(c) Absence of some prescribed formality:

Courts generally are of the opinion that when a person intending to contract with a corporation has ascertained that the corporation possesses the power to enter into the contract, it is not necessary for him to go further and satisfy himself that the contract has been executed with all the necessary formalities—but that he may assume such fact in the absence of proof to the contrary. And in such case the corporation will be estopped from setting up the fact of its non-compliance with prescribed formalities. *Durkee v. People*, 53 Ill. App. 396; *Royal British Bank v. Turquand*, 6 El. & Bl. 327; *Bank of U. S. v. Dandridge*, 12 Wheat. 64; *Zabriskie v. O., O. & O. Ry. Co.*, 64 U. S. 381; *Whitney v. Wyman*, 101 U. S. 392.

The court, in *Central Trans. Co. v. Pullman Palace Car Co.*, 139 U. S. 24, say:

"When a corporation is acting within the general scope of the powers conferred upon it by the legislature, the corporation, as well as persons contracting with it, may be estopped to deny that it has complied with the legal formalities which are prerequisites to its existence, or to its action, because such requisites might, in fact, have been complied with."

(d) Contracts, *ultra vires*, as to a part only:

A corporation may enter into a contract, a portion of which is within the powers of the corporation, but the remainder of which contract is void by reason of its being prohibited or unauthorized. In such case, if the void part is susceptible of separation from the part which is good, the latter will be allowed to stand. *P. & S. R. Co. v. Lewis*, 33 Pa. St. 33; *Railroad Companies v. K. & H. Bridge Co.*, 131 U. S. 371.

(e) Liability for torts committed in the prosecution of an *ultra vires* act.

It is a rule too well settled to admit of discussion that a corporation is liable for the tortious acts of its agents and servants to the same extent as a natural person would be; and this principle applies as well to wrongs

committed in the prosecution of an *unauthorized* act as to those committed in prosecution of some act which the corporation might lawfully perform.

Thompson, in his work on Corporations, Vol. V., Sec. 5933, gives the following cogent reason for the distinction made in the application of the law to *ultra vires* contracts, and to *ultra vires* torts. He says:

"The *ultra vires* contract takes place with his (the plaintiff's) consent, and the law holds him blamable if he does not discover that it is *ultra vires* before he enters into it; but the *ultra vires* tort does not take place with his consent, and the law does not hold him blamable for not anticipating it and intercepting it."

See, *Salt Lake City v. Hollister*, 118 U. S. 256; *Central Ry. Co. v. Smith*, 76 Ala. 572; *Bissell v. Mich. S. Ry. Co.*, 22 N. Y. 258; *New York, etc. R. Co. v. Haring*, 47 N. J. L. 137; *Buffett v. Troy, etc., R. Co.*, 40 N. Y. 168.

(f) Disaffirmance after part performance:

Where the contract sought to be disaffirmed is *malum in se*, and both parties are equally guilty, it is the policy of the courts to leave the parties in the position in which they have placed themselves, and to refuse to decree the return of money paid under such a contract, or to decree payment for services rendered in pursuance of same.

But in case of a suit brought to disaffirm a contract *malum prohibitum*, and to recover money paid under such a contract, the courts will generally decree such repayment; and a like rule prevails in cases where the party suing is himself innocent of any wrong doing. *Chicago Bldg. Soc. v. Crowell*, 65 Ill. 455; *Bradley v. Ballard*, 55 Ill. 413; *Nat'l Pemberton Bank v. Porter*, 125 Mass. 333; *Attleborough Nat'l Bank v. Rogers*, 125 id. 339; *Nat'l Bank v. Matthews*, 98 U. S. 621; *Whitney Arms Co. v. Barlow*, 63 N. Y. 62.

(g) Estoppel:

On the question of whether, and under what circumstances, a corporation, or the party contracting with it, may set up the defence of *ultra vires* when sued on a contract which the corporation had no authority to make, the courts are anything but harmonious. To depart from broad principles and safe generalities in attempting an exposition of the doctrine of estoppel to plead the *ultra vires* character of a corporate act, is to enter upon dangerous ground.

The better opinion, and that followed by a majority of the courts of the United States, including New York, Massachusetts, Michigan and Illinois seems to be that where suit is brought on an *ultra vires* contract which is not illegal in the sense of being against public policy, or prohibited by statute, but merely in excess of the powers of the corporation, both the corporation and the other contracting party will be estopped from attempting

to show that such assumption of power by the corporation was unwarranted, and this in all cases where to hold otherwise would be to "accomplish a legal wrong." *Kadish v. G. O. E. Loan & Bldg. Assn.*, 151 Ill. 531; *Whitney Arms Co. v. Barlow*, 63 N. Y. 62; *Bissell v. Railroad Co.*, 22 N. Y. 259; *Parish v. Wheeler*, 22 N. Y. 494; *H. & G. Mfg. Co. v. H. & W. M. Co.*, 127 N. Y. 252; *Bradley v. Ballard*, 55 Ill. 413; *Heims Brg. Co. v. Flannery*, 137 Ill. 309; *Day v. Buggy Co.*, 57 Mich. 151; *Dewey v. Railroad Co.*, 91 Mich. 351; *Slater Woolen Co. v. Lamb*, 143 Mass. 420.

This is certainly the more enlightened doctrine, for, as was said by Mr. Justice Porter, in *Northampton County's Appeal*, 30 Pa. St. 385:

"A man who has enjoyed a privilege has no right to say that, because he ought not to have enjoyed it, he will not pay for it. However unlawful the act, it would be unsound policy to give him this immunity.

And in *Brg. Co. v. Flannery*, 137 Ill. 309, the court say:

"The defense of *ultra vires* cannot avail the defendant. Even admitting that entering into said contract was in excess of the defendant's corporate powers, yet, having entered into said contract, and enjoyed its benefits, it should be estopped to appeal to limitations imposed by its charter for the purpose of escaping payment of the stipulated consideration."

But the above doctrine of estoppel to plead the *ultra vires* character of a contract of a corporation, is predicated entirely upon the assumption that the contract sued upon has been wholly or partially executed. Before courts will decree an estoppel, one or both of the parties must have altered his or their position with reference to the subjectmatter of the contract, either by the payment of money or the furnishing of labor.

It is not the policy of the courts to interfere with *ultra vires* contracts wholly executory, and the doctrine of estoppel has never been applied to them. *Nassau Bank v. Jones*, 95 N. Y. 115; *Bradley v. Ballard*, 55 Ill. 413.

ITS APPLICATION TO CORPORATIONS CHARGED WITH A PUBLIC DUTY:

Corporations are said to be charged with a public duty when they are granted charters for the sole purpose of performing functions conducive to the public welfare. They become "trustees for the public to discharge a duty because of a privilege conferred." And it naturally follows that such a corporation can not lawfully perform any act, or enter into any contract which will incapacitate it any contract which will incapacitate it from performing those functions. Such contracts when entered into are held not to be merely *ultra vires*, but illegal and void, being contrary to public policy.

From the fact that such quasi-public corporations have had conferred upon them the power to engage in a business from which the general public is debarred. They are held to a stricter accountability, perhaps, than the

ordinary business corporation. Railroad, gas, telegraph and telephone companies, have no powers other than those conferred upon them by their charters, and those powers, when contrasted with the latitude given the ordinary business corporation, may be said to be limited. The latter, as an incident of corporate existence, has the power to sell, mortgage, lease or otherwise dispose of its property as it may see fit, for it owes a duty only to its stockholders; while the former must take into consideration the fact that primarily, their duty is to the public, and they may make no disposition of their property of franchises which will affect in any way their ability to properly perform that duty.

The right to sell, mortgage, or lease the property of such corporations can never arise by implication. It must be expressly given by charter provision or legislative enactment. *Oregon Ry. Co. v. Oregonian R. Co.*, 130 U. S. 1. And in every case where a corporation of this character attempts to dispose of its property and franchise without proper authorization, such attempted disposition is *ultra vires* and void, being against public policy. The attitude of the courts in regard to these *ultra vires* contracts is distinctly outlined by Mr. Thompson in his valuable work on Corporations.

He says, Vol. 5, page 4653 :

"A continuing duty rests upon both parties to the contract to disaffirm it at the earliest moment, upon doing justice to the other party, which duty is not diminished by lapse of years; and while the courts will not aid either party to it to undo it, so far as it has been executed between them, yet they will do nothing to aid in its enforcement; and neither party will be allowed to sustain an action against the other upon it, so far as it remains unexecuted."

No clearer exposition of the law on this subject can be found, than the above. And the propositions embraced therein are supported by a long line of English and American authorities: *Central Trans. Co. v. Pullman Car Co.*, 139 U. S. 24; *Oregon Ry. v. Oregonian Ry. Co.*, 130 U. S. 1; *Pennsylvania R. R. Co. v. St. L. A. & T. H. Co.*, 118 U. S. 290; *Thomas v. Railroad Co.*, 101 U. S. 71; *Eastern Counties Ry. Co. v. Hawkes*, 5 H. L. Cas. 331; *Chicago Gas Co. v. People's Co.* 121 Ill. 530; *St. Louis, etc., Rd. Co. v. T. H. & I. R. Co.*, 145 U. S. 393; *East Anglian Ry. v. Eastern Co. Rd.* 11 C. B. 775; *Davis v. Old Colony Rd. Co.*, 131 Mass. 258.

THE REMEDY EXISTING IN

(a) The state :

When a Corporation exercises the powers granted to it by the state in a manner inimical to the public interests the state which created it may, by proper court proceedings, determine the corporate existence of such offending body.

The rule that deprives an individual of personal liberty, and in some cases of life itself, where his continued existence would be detrimental to the public safety and well being, applies equally as well to cases where that danger arises from the acts of an artificial body; and no court will, under such circumstances, hesitate to decree corporate death.

The corporation, upon acceptance of its charter, impliedly agrees that it will exercise only those powers delegated to it, and this in such a manner that no injury or harm shall accrue to the public thereby; and if it violates this agreement the state has the option of pursuing one of three remedies:

1. The legislature may repeal the charter of the corporation, where the right to do so is reserved.

2. The state may commence proceedings at law to have the charter of the corporation forfeited for misuser. (*People v. Improvement Co.* 103 Ill. 491.)

3. The state may ask for a decree of ouster from the exercise of the usurped powers only. (*State v. People's Ass'n*, 42 Ohio St 579.)

The law, however, looks with disfavor upon forfeitures, and only in those cases where the interests of the general public are endangered will the state interfere by proceedings in the courts to obtain a judgment of ouster. *People v. North R. S. R. Co.*, 121 N. Y. 582; *State v. Standard Oil Co.*, 49 Ohio St. 137; *Distilling Co. v. People*, 156 Ill. 448; *Ward v. Farwell*, 97 Ill. 593.

Where the *ultra vires* act is calculated to injure stockholders and creditors only the state will not interfere, but will leave the injured parties to pursue their remedy at law.

The remedy existing in

- (b) The stockholders; and

- (c) Third persons:

Lord Chancellor Hardwicke decided in 1742, in the case of *The Charitable Corporation v. Sutton*, 2 Atk. 400, that a corporation might bring an action to remedy the *ultra vires* acts of its trustees or direction. And it has since been established that where the corporation fails, through inability or disinclination, to institute such suit, the action may be brought by one or more of the stockholders; but such refusal on the part of the corporation to sue must first be shown before equity will intervene.

Therefore, where the corporate officers or directors act in such a manner as to menace the rights of the stockholders and the corporation itself is unable, or refuses, to interfere, the remedy of the stockholders is by bill in equity, either to enjoin the commission of the act, or in case of a contract, to disaffirm it, where no principle of stoppel intervenes. *Atwood v. Merry-*

weather, L. R., 5 Eq. 464; Dodge v. Oakland, 104 U. S. 450; Leslie v. Brillard, 110 N. Y. 519.

In the absence of fraud or breach of trust, the creditors of a corporation, have no right to internal management; and they will not be allowed to come into a court of equity and obtain an injunction enjoining the corporation from committing any act or entering into any contract, notwithstanding the act or contract sought to be enjoined is *ultra vires*. There appears to have been no deviation from this rule in either the English or American courts. Pond v. F. & L. Rd. Co., 130 Mass. 194; Mills v. Northern Ry., 5 Ch. App. 621.—*C.L.N.*

Fixtures—A Mortgagee's right to fixtures.

The judgment of Joyce, J., in Lyon v. London City and Midland Bank (Times, 19th inst.) is an interesting reminder that the law with regard to the right of a mortgage to fixtures, as it has been settled by recent decisions of the Court of Appeal, is not in accordance with justice, and that when opportunity occurs it ought to be reconsidered. The rule which might well be supposed to be applicable was enunciated by North, J., in Cumberland Union Banking Co. v. Maryport, etc., Co., 40 W. R. 280 (1892), 1 Ch., p. 425: "I think it was not in the power of the mortgagors to confer on their mortgagees a better title than they themselves had to the property which they agreed to mortgage to them;" and under ordinary circumstances this rule would of course prevail. But the doctrine that chattels, by being affixed to land, become part of the land, and follow the title to the land, has been allowed to displace the rule, and mortgagees have thus been enabled to take possession of articles which, but for this doctrine, would clearly be the property of third parties. The three recent Court of Appeal cases of Gough v. Wood & Co., 42 W. R. 469 (1894), 1 Q. B. 713; Hobson v. Gorringe, 45 W. R. 356 (1897), 1 Ch. 182, and Reynolds v. Ashby & Son (1903), 1 K. B. 87, enable the present legal position to be stated with accuracy, although they do not show how that position is, except upon merely technical grounds, to be justified.

The case in favor of the mortgagee is clearest when the articles in question are already affixed to the land. It is true that, having regard to modern conditions under which machinery is supplied, the duty of inquiring as to the mortgagor's title to fixtures, as well as his title to the land, ought to be imposed upon mortgagees. But the law does not trouble to adapt itself to modern conditions. A trite maxim expressed in Latin is enough to set aside all consideration of equity or of business convenience. *Quicquid plantatur solo cadit* is easily remembered and easily said, and no one has yet

had the courage quietly to set the well-worn legend aside. The mortgagee finds upon the land valuable property, and although he may well suspect that it does not belong to the mortgagor, but has only been delivered on hire, he is allowed to take it as part of his mortgage security. But when the articles are not affixed at the time of the mortgage there is, of course, in principle and justice, no reason whatever for allowing the mortgagee to profit at the expense of third parties by the fact that they have been subsequently brought upon and affixed to the land, and this is so obvious that in *Gough v. Wood & Co.*, *supra*, the Court of Appeal defeated the mortgagee's claim by implying an authority on his part to the mortgagor, while the latter remains in possession, to bring on the land, and to allow the true owner to remove, fixtures necessary for his business. This implied authority, said Lindley, L. J., "ought to be regarded as authorizing the mortgagor, whilst in possession, to hire and bring and fix * * * fixtures necessary for his business, and to agree with the owner that he should be at liberty to remove them at the end of the time for which they are hired. Unless this is so, persons dealing *bona fide* with mortgagors in possession will be exposed to very unreasonable risks, and honest business with them be seriously impeded."

This passage, however, is a solitary and very limited concession to the requirements of justice, and its limit was fixed by the case of *Reynolds v. Ashby & Son*. It would seem that if such an authority is to be implied, and if a third party acts upon it by placing valuable goods upon the land, the mortgagee ought not to be at liberty to cancel it by going into possession. Yet such has been held to be the law. As long as he remains out of possession, then the principle of *Gough v. Wood* applies, and the owner of the goods is at liberty to remove them, but should he go into possession—or, which is the same thing, should the very circumstances arise which make it important for the owner of the goods to assert his rights—then his chance of doing so is at an end and the goods are allowed to be retained by the mortgagee. Merely to state the law is sufficient to show that it requires to be altered, and it is not surprising that in *Lyon v. London City and Midland Bank*, Joyce, J., expressed his sympathy with the principle enunciated by North, J., in *Cumberland Union Banking Co. v. Maryport, etc., Co.*, *supra*, viz., that the mortgagor could not give to the mortgagee a better right than he himself had. Similarly in *Gough v. Wood & Co.*, Wright, J., held that "one man's property can not be taken away from him by being fixed in the land of another" see (1894), 1 Q. B., p. 718. It may perhaps be suggested that the judges of first instance have been trying to dispense justice in spite of the venerable maxim, referred to above, but that they have been overruled

by the technical views taken in the court of appeal. Under these circumstances a discussion of the matter in the House of Lords would seem to be desirable.

But the foregoing remarks assume that the articles in question have been in fact so affixed to the land as to become fixtures, and, if this is not so, then of course the title of the true owner is not displaced, and the claim of the mortgagee is defeated. This is what happened in the recent case before Joyce, J. The mortgaged premises were a place of public entertainment at Brighton. Prior to the mortgage, the mortgagor had hired a large number of arm-chairs at the rate of £20 a week with an option of purchase within a limited time for £676. Each chair had two standards with holes at the foot for screws, and in accordance with the requirements of the local authority, they were secured to the wooden floor. Now, the test to be applied to discover whether any particular article has become affixed to the freehold are, as is well known, not of a very definite character, and frequently they are difficult of application. It is necessary to consider the mode of annexation, and also its object. Slight annexation will be enough if there is clearly an intention to make the chattel permanently a part of the land or building, but, provided the article can be removed without great damage to the freehold, even a very secure mode of annexation will not make it a fixture, if it has been affixed for a temporary purpose or for the more convenient use of the article as a chattel: *Holland v. Hodgson*, (20 W. R. 990; L. R. 7 C. P. 328). In the present instance, however, Joyce, J., naturally found no difficulty in applying the tests. The mode of annexation of the chairs was not such as in itself to make them fixtures, while the object of the annexation was merely temporary. The chairs were never, in the words of Lord Halsbury, C., in *Leigh v. Taylor*, (50 W. R., p. 624; (1902) A. C. 157), intended to "form part of the structure" of the building. Hence Joyce, J., decided against the claim of the defendant bank, the mortgagees.—S. J.

Associations—Liability of a Member of an Unincorporated Club.

Courts of law, voicing the common understanding of men, have always recognized the essential difference between the legal relations of men voluntarily organized for social purposes into a society or club and those associated for pecuniary profit. It is in this particular, among others, that a club differs so materially from partnership. *Lindley on Partnership*, 6th Ed., p. 13. It is clear that a member of a club does not, by the act of joining, constitute the trustee or the committee of the club his agents for the purpose of contracting debts. *Todd v. Emly* (1841), 8 M. & W. 505. By

the payment of his initiation fee and dues, he acquires a privilege, the right to enjoy the club premises. His dues with those of all the members constitute a fund from which within their authorized powers the trustees or committee managing the club may draw for the purpose of defraying expenses. If this sum will not be sufficient for a contemplated outlay it is their duty, suggests Lord Abinger, O. B., in *Flemyng v. Hector* (1836), 2 M. & W. 172, to call on the members for further subscriptions. In the case cited an action was brought by Flemyng, a wine merchant, against Hector, a member of the defunct Westminster Reform Club. The defendant had never dealt with the plaintiff but it was in evidence that he had frequently been heard to call for Flemyng's wine. It was held, after full consideration by the whole court, that there was no agency either by prior authorization or subsequent ratification, that the fact of membership carried with it no idea of principal and agent, and that if plaintiff relied on such agency he must prove it as he would any other fact. The interest of a member in the property of the club seems to be at most an inchoate right to a proportionate share of the assets on dissolution, and even in this he loses when he ceases to be a member. In matter of *St. James Club* (1852), 2 D. M. & G. 382. His interest seems to be little more than a license revocable for cause *Hopkinson, Marquis of Exeter* (1867), L. R. 5 Eq. 63, neither assignable, transmissible, nor descendible. In brief, the nature of a member's interest, the character of a club, and the common acceptance of a member's obligation by the world at large, all tend to negative any liability beyond that for the stated dues and assessments provided for by the rules of the club.

• • This conception of a club member's freedom from liability founded, as it is, on the tacit understanding of all men, has been found sufficient to govern the application of an established rule of law in the recent case of *Wise v. Perpetual Trustee Co.* (1903), 72 L. J. P. C. 31. In that case the plaintiff, as administrator of the estate of one of the trustees of the New South Wales Club, sought from the defendant, among others, indemnity from certain liabilities resulting from the position of trustee. While the defendant was a member of the club, at a regular meeting, a committee of which the plaintiff's testator was one, was authorized to lease certain premises for the occupation of the club and to become trustee thereof. This was done, the trustees executing the lease with various onerous covenants for the payment of rent on which they became liable, and for indemnity from this liability the suit was brought. No agency was established, and the broad question was whether, as the relation of trustee and *cestui que trust* existed, the *cestui* were bound to indemnify the trustee against all losses sustained by reason of his ownership of the trust res. The case was

treated by the court as one of novel impression, the conclusion reached being that the defendant was not liable.

Lord Lindley, who delivered the opinion, had, only two years before (*Hardoon v. Belilios* (1901), 70 L. J. P. C. 9), declared, in emphatic terms, that the right of trustee to indemnify from the *cestui*, where acting within the terms of his trust, was a right springing inevitably out of the trust relations. This right of the trustee, based apparently on the equitable principle that he who has the benefits shall also bear the burdens of ownership seems well established in the English law. *Hardoon v. Belilios, supra*; *Castellan v. Hobson* (1870), L. R. 10 Eq. 47. Conceding, however, under the facts in the principal case that the relation of trustee and *cestui que trustent* existed and admitting the equitable principle that the beneficial owner should bear the burdens of ownership, the decision is sound since the evidence of club usage established the terms of the trust. The case is analogous where the trust deed expressly provides for indemnity, and where the *cestui que trust* is not liable beyond the sum so stipulated. *Gillan v. Morrison* (1847), 1 De Gex & Sm. 421; *Selvyn v. Harrison* (1862), 2 J. & H. 334. To reach a result contrary to the principal case would be to impose a liability inconsistent with the terms on which the defendant became a member of the club.—*C. L. R.*

REVIEWS.

A History of English Law: Volume I. By W. S. HOLDSWORTH, M. A., B.C.L., Vice-President, Fellow and Lecturer of St. John's College, Oxford, of Lincoln's Inn, Barrister-at-Law. LONDON: Methuen and Co., 36 Essex Street, W. C. 1903. Demi 8 vo. Pages xliv and 460. Price 10 s. 6 d. net.

THIS volume is intended to be the first of the two volumes dealing with the General History of English Law. The learned author deals with the History of the Courts and of the jurisdiction exercised by them at different periods. Thus, it begins with a detailed consideration of the Courts as they stood in the time of William I and then proceeds to show the transformations these Courts went through accompanied by a curtailment or an extension of their jurisdiction, as dictated by the force of events that followed. This portion contains interesting information about the communal Courts, Courts of Private Jurisdiction and the Curia Regis. The next chapter deals with the decline of the Local Courts and of Private Jurisdiction. The system of Common Law Jurisdiction is then handled in chapter IV. This part is subdivided under the heads of (1) the Common Law Courts, which include the Court of Common Pleas, Court of King's Bench, having civil and criminal

jurisdictions, superintendence over the due observance of the law by officials and others, the Court of Exchequer and the Court of Exchequer-chamber, (2) the Itinerant Justices, which include Justices in Eyre and the Justices of Assize, (3) The Justices of the Peace and (4) The Jury. Chapter IV deals with the House of Lords. This portion of the book deals with the rise of Parliament, separation of Council from Parliament, and Jurisdiction of the House of Lords, which falls under three heads—civil jurisdiction, criminal jurisdiction and jurisdiction in cases of Privilege. The next chapter devotes nearly seventy pages to the subject of chancery. It deals with (1) the history of the chancery and the development of the Court of chancery in the Mediæval Period, and the Tudor and the Early Stuart period, and (2) the jurisdiction of the chancellor and the Court of chancery. Chapter VI concerns itself with the Council, as it stood in the Mediæval Period, as it grew in the Tudor and the early Stuart period and the jurisdiction it has at the present day. This is followed by a consideration of the Courts of a Special Jurisdiction, which include the Court of Admiralty, the Court of the Constable and Marshal, the Courts of the Forest and the Ecclesiastical Courts. The remaining two chapters bring us to the Courts of our own times: chapter VIII deals with the Judicature Acts and chapter IX with the New County Courts. We have briefly sketched the main items contained in this book; and owing to the limited space at our command it is impossible to give a detailed idea of the abundant materials contained in this volume. The learned author has drawn the materials from all sources available to him, has marshalled them in series ranks and has dressed them in his felicitous style. The vast and varied amount of information, the exquisite workmanship, the decent get up and the moderate price are among the chief recommendations of this book and we make no doubt that it will rapidly gain favour with the profession in this country. The second volume will, we are informed, deal with the history of the law itself: and we await with great pleasure the appearance of that volume.

The Elements of Roman-Dutch Law, being a Digest of Van der Linden's Institutes of Holland. By WM. T. LEE, Editor of the "Natal Law Quarterly." DURBAN: Robinson and Co. Ltd. 1903. Roy. 16 mo. Pages 92. Price 7s. 6d.

THIS neatly printed little book contains, what its title indicates, the Digest of Van der Linden's Institutes of Holland. Instead of making any attempt to deal with practice and procedure as obtaining in Holland or with the hydra-headed law of commerce, the learned writer has confined his attention to the elements of Roman-Dutch law which form the foundation of

Common Law as it obtains in South Africa at the present day. This handbook will, it seems, be useful to the practitioner as lending itself to a ready reference; while to the student of law it will appeal as being presented in such a form that the fundamental principles of the Common Law can be readily grasped.

The Law of Transfers of Property and Easements: Law Students Series. By M. L. AGARWALA, B. SC. LL. B. (LONDON), of Gray's Inn, Barrister-at-Law. ALLAHABAD: RAM NARAIN LAL, Kattrra Road, 1903. Cr. 8 vo. Page xvi, 293 and xxii. Price Rs. 3.

THIS book is second of the series that Mr. Agarwala has called into existence with a view to meet the requirements of students of law. Its title does not adequately convey to one's mind the subjects that are found treated of in this book. It deals with the law of Transfers of Property, *inter vivos* and on death, and of Easements, and covers the ground taken up by the Transfer of Property Act (excluding the chapter on mortgages, which is dealt with in the first volume of the series), the Indian Succession Act, the Probate and Administration Act, the Hindu Wills Act and the Easements Act. As in the first volume the texts of these Acts furnish the groundwork of the principles which are clearly enunciated and these are clothed with a succinct commentary as supplied by a selection of important recent cases decided by the Indian High Courts. This manual will prove serviceable to the student in revising his studies at the examination time.

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INTEREST IN A MORTGAGE DECREE.

A NENT the question of interest in a mortgage decree a few observations appear to be necessary to supplement the elaborate and well considered note by H. S. P., that appeared in September issue of the *Bombay Law Reporter*, and to remove the doubts created by it. It must be pointed out at the outset that notwithstanding the remarks of Lord Hobhouse in the case of the *Maharaja of Bharatpur v. Rani Kanno Dei* (28 I. A. 35), which are reproduced below, the Legislature has not found out its way to amend ss. 86 and 88 of the Transfer of Property Act, and before that is done we must take the law as we find it interpreted by the best authorities on the subject.

The remarks of Lord Hobhouse are in these words: "It must be admitted that s. 88 is calculated to cause difficulty, and a sort of difficulty which is a fruitful source of conflict in judicial interpretation of new statutes. It looks as if the draftsman of the Transfer of Property Act has overlooked the difference between a foreclosure and a sale, and had forgotten that in the former case interest stops because the mortgagee gets the property in lieu of his debt whereas a sale must be subject to some substantial delay, and in many cases is subject to long delays. However that may be, there is the difficulty, and if s. 88 could be looked at as an isolated enactment, quite detached from other legal considerations, it would be hard to construe it otherwise than was done by the Allahabad High Court in the case of *Amolak Ram*."

The dictum in *Amolak Ram's case* is to the following effect: "In a suit upon a mortgage for the sale of the property mortgaged the Court has no power to allow in the account under s. 86 of the Transfer of Property Act 1882, or in its declaration under that section, interest for a period beyond the date of payment, which has to be fixed within six months from the date of the decree. Sections 209 and 222 of the Civil Procedure Code 1882, do not affect the

special provisions as to allowance of interest contained in the Transfer of Property Act 1882." *Amolak Ram v. Lachmi Narain* (I. L. R. 19 All. 174). It is thus obvious that, on plain construction of the sections of the Transfer of Property Act, the Privy Council would not give any interpretation on the sections other than that put by the High Court at Allahabad. But the Allahabad High Court rather too hastily overruled the aforesaid decision of their Court, relying upon a dictum of Lord Hobhouse in *Rameswar Koer v. Mahamad Mehedi* (25 I. A. 179; I. L. R. 26 Cal. 39). The facts of that case were that the High Court allowed to the mortgagee decree-holder interest at the contract rate up to the time fixed for payment within six months from the date of the decree, or, declaring in Court the amount due, with further interest and 4 p. c. instead of 12 (the contract rate) till realization. As regards this decree of the High Court Lord Hobhouse has observed: "The High Court founded their order on ss. 86 and 88 of the Transfer of Property Act, which indicate clearly enough that the ordinary decree in a suit of this kind, should direct accounts allowing the rate of interest provided by the mortgage up to the date of realization. The Legislature has stated what should be the rule in suits of this kind, and the Courts cannot have a better guide to their discretion. No peculiarity has been shown to exist in this case for cutting down the mortgage rate of interest. *If the High Court has allowed something less, the mortgagee makes no complaint*". The Subordinate Judge whose decree was modified by the High Court had awarded interest at 4 p. c. instead of 12 per cent (the contract rate) from the institution of suit down to the day fixed for payment, within six months, and until realization. The common ground of attack and defence in the case of *Rameswar Koer* was as regards rate of interest from the institution of the suit down to the day fixed for payment within six months. The High Court awarded interest at the contract rate down to the day fixed for payment and the decree of the High Court was affirmed by the Privy Council. But the Full Bench of the Allahabad High Court attaching much weight to the words, "If the High Court has allowed something less" came to the conclusion that it was decided by the Privy Council to award interest at the contract rate up to realization: *Bakar v. Udit Narain*, I. L. R. 21 All. 360 at p. 373). The point as to what interest should be allowed after the date fixed for payment or whether any interest can and ought to be awarded was never raised and decided. The remarks of the Privy Council in this respect are merely *obiter dicta*. As regards this *obiter dictum*, Lord Hobhouse himself has observed "In the recent case of *Bakar v. Udit Narain* the High Court of Allahabad itself overruled the decision in *Amolakram's* case. Perhaps they rested undue weight on a decision of this Board. It is true that in the case of *Rameswar*

Koer, decided in July 1898, this Board upheld the High Court of Calcutta in awarding interest subsequent to the date fixed for payment by the mortgagor, which would have been wrong if the decision in Amolak Ram had been right: But that point was not raised, and probably never was thought of by any body until Amolak Ram's case came to be known, so that the decision of this Board is rather a proof of the prevalence of the doctrine contrary to the principle of Amolak Ram than a conscious pronouncement against it" (*Maharaja of Bharatpur v. Rani Kanno Dei*, 28 All. 174 at p. 192).

The conclusion then is that it is now settled law that Courts are bound to award interest at the contract rate until the day fixed for payment within six months from the date of the decree or declaring the amount in Court (I. L. R. 20 Cal. 360; I. L. R. 21 Mad. 364; I. L. R. 24 Cal. 766; I. L. R. 21 All. 361; I. L. R. 19 All. 174; I. L. R. 26 Cal. 39, p. c.; I. L. R. 23 All. 181, p. c.). This view having been directly affirmed by the Privy Council in *Rameswar Koer's case* (26 Cal. 39) it is not now open to any High Court to place any other construction on ss. 86 and 88 of the Transfer of Property Act. There is of course no decision of our High Court on the point but our High Court is as much bound by the decision of the Privy Council as any other High Court. *Rameswar's case* does not seem to have been noticed by H. S. P. and hence the conclusion "the award of interest at the contract rate, if not open to any legal valid objection, is obligatory up to the date of the decree or of declaring the amount in court, and is discretionary thereafter, the discretion being a judicial discretion to be exercised on proper judicial grounds." Having regard to the decision in *Rameswar's case* I say with great deference to the learned writer of the article that this is not the correct view of the law. He has pointed out several difficulties and hardships in coming to a different view or to the view adopted by the High Courts of other Presidencies. But these difficulties and hardships are more imaginary than real. The first and foremost of his difficulties is this "If the amount so ascertained is not paid in full by the mortgagor, the Court has no power to accept a shorter payment as a valid discharge of the decree or to refuse on that ground to make the decree absolute. Now it may happen that the mortgagor offers payment on the very next day of the passing of the decree. In that case there is no valid reason to insist upon his paying future interest which has not even begun to run." If a mortgagor is so circumstanced as to be able to pay off the mortgage debt immediately he has many courses open to him. First he can avoid the suit itself by depositing the money due under the mortgage under s. 83 of the Transfer of Property Act. Then, if the suit is filed, he can make payment into Court under s. 376 of the Civil Procedure

Code. Thirdly, if the case has advanced as far as decree he may ask the Court to fix as short a time as possible within six months from the date of the decree. It is not the mortgagee's fault that he has to come to the Court. The time of six months or any shorter period allowed is not for the benefit of the mortgagee but that of the mortgagor. The fundamental principle of the law of mortgage is that the Court of Equity always accords to the mortgagor a fair allowance of time to enable him to discharge the debt and recover the estate. And the Courts are so watchful of this privilege and interest of the mortgagor that even when the mortgagee buys the equity of redemption the Courts still allow the mortgagor to redeem. It was remarked by Farran C. J., "a mortgagee is not entitled by means of a money decree obtained on a collateral security, such as a bond or covenant, to obtain a sale of the equity of redemption separately because by doing so he would deprive the mortgagor of the privilege which, upon the principle of considering the estate as a pledge, a Court of Equity always accords to a mortgagor, namely, a fair allowance of time to enable him to discharge the debt and recover the estate. This privilege is an equitable incident of the contract of mortgage, and it would be inequitable to permit the mortgagee to evade it; to do that circuitously which he cannot do directly" (*Martand v. Dhondo* I. L. R. 22 Bom. 624, at p. 628). It is thus evidently for the benefit of the mortgagor that the time is allowed and he who takes the benefit must bear the burden.

The next inconvenience pointed out is that arises by award of interest after the decree absolute is made and it will be more convenient to refer to this subject after the argument, based upon the construction of the sections, is disposed of.

It is next propounded that the expression "*on the date next hereinafter referred to*" may mean either the *day* within six months fixed by the Court or the date of declaring in Court the amount so due and it is conceded that grammatical and natural sense favours the former meaning, but that interpretation according to grammatical sense is denounced on the ground of incongruity. There is truly speaking no real incongruity in accepting the former meaning but it is as well imaginary.

Section 86 may be divided into two parts and read as follows: "In a suit for foreclosure if the plaintiff succeeds the Court shall make a decree, ordering that an account be taken of *what will be due to the plaintiff for principal and interest on the mortgage*, and for his costs of the suit, if any, awarded to him, *on the day next hereinafter referred,*

• And ordering that upon the defendant paying to the plaintiff or into Court the amount *so due* on a day within six months from the day of declar-

ing in Court the amount so due to be fixed by the Court &c”.

The second reading will be as follows : “ The Court shall make a decree declaring (the amount so due) what *will* be due to the plaintiff for principal and interest on the mortgage and for his costs of the suit, if any, awarded to him, on the day next hereinafter referred to, at the date of such decree &c.” Or put it as follows : “ The Court shall make a decree declaring, at the date of such decree what will be due to the plaintiff for principal and interest &c.” Reading the section as aforesaid the words “ at the date of such decree ” would not appear to be meaningless. Though the decree is to be made beforehand the amount that will be due at a future fixed date is to be declared at the date of the decree ; and this is the interpretation put upon the section in *Suryanarayan's case* (20 Cal. 360). For putting this construction no such words as “ including interest at the rate provided by the mortgage deed upto the day so fixed ” need be supplemented. It is the plain grammatical construction and the mortgagee need not be afraid of any unpleasant revelation that a decree in one case is more favourable to him than in the other. The principle is that the mortgagor is to be given six months or lesser time as the Court fixes from the date of declaring into Court the amount due, whether it is determined by the decree itself or whether it is determined by an order in the decree directing accounts to be taken. The crucial day is the day on which the amount is declared in Court.

The question whether interest after the date fixed for payment can at all be allowed, and if so at what stage, or whether the award of interest after that date is discretionary with the Court and the Court is not bound to stick to the contract rate is beset with difficulties and is yet open for the decision of our High Court.

The Calcutta and the Madras High Courts have held that after the date fixed for payment the Courts are at liberty to reduce the contract rate but the discretion to award interest after that date is not excluded by the Transfer of Property Act as was once held by the Allahabad High Court in *Amolak Ram's case* (19 All. 174; see 20 Cal. 360 ; 24 Cal. 766 and 21 Mad. 364). The question was not decided in *Rameswar Koor's case* by the Privy Council and whatever remarks fell from Lord Hobhouse in that case were declared by himself to be *obiter dicta* in the case of the *Maharaja of Bharatpur*. Let us next see whether the ruling in the case of the *Maharaja of Bharatpur* is any authority on this question. That case related to the interpretation of a decree in which interest was allowed after the period fixed for payment and the only question there was what contraction ought to be put upon the decree. The question was whether there was any ambiguity in the decree and if there was one whether the decree should be read

so as to make it in conformity with law, and the incidental question arose whether having regard to the provisions of the Transfer of Property Act awarding of interest after the day fixed for payment was legal. For the decision of that case the decision of the question at issue was not necessary, for the case was entirely decided upon the construction of the decree and Lord Hobhouse has observed: "This view of the decree is sufficient to decide the present appeal" (I. L. R. 23 All. at p. 191). The rest of the remarks in the case must thus be considered as *obiter dicta* but they proceed from eminent authority and must bear the weight they deserve.

It remains next to examine the grounds of the observations of the Privy Council. As already pointed out their lordships have observed upon the construction of ss. 86 and 88 that it would be hard to construe s. 88 otherwise than was done by the Allahabad High Court in the case of *Amolak Ram*. Then proceed the grounds for holding that it is permissible to award interest after the date fixed for payment. These in their Lordships' words are as follows: "But considering the universality of the long established practice, its continuance for years after the Transfer of Property Act was passed, the manifest justice of it, the conformity with it of s. 97 which is in *pari materia* with s. 88, the presumption that s. 88 was framed with reference not to the running of interest but to the determination of the time for redemption or sale alternatively, and the form of the suit, sanctioned by the Procedure Code, their Lordships have no hesitation in expressing their concurrence with the High Courts of Calcutta and Madras and with the ultimate decision of the High Court of Allahabad."

The first question then to be determined is whether there existed such an universal and long established practice in this Presidency of awarding interest after the period fixed for payment and was such practice continued after the Transfer of Property Act came into force in Bombay. The Transfer of Property Act was made applicable to this Presidency from the 1st of January 1893. The reported decision before the application of the Act is found in *Daudbhai v. Daudbhai* (I. L. R. 14 Bom. 113) and that after the application of the Act is contained in *Chattarbai v. Harbhaji* (I. L. R. 20 Bom. 744). In both these cases interest was allowed up to the date of the decree and not after that. It must, therefore, be presumed that these decisions rather negative such practice as aforesaid than establish it. The first ground of the observation of the Privy Council thus vanishes so far as Bombay is concerned. The second ground is based on the manifest justice of awarding interest in such cases. As regards this the inconveniences pointed out by H. S. P. at p. 139 and the remedies suggested in making it only discretionary with

the Court to award or not to award interest deserve serious consideration. The further arguments used by Lord Hobhouse have been elaborately discussed by Jenkins J. (now Sir Lawrence Jenkins C. J.) in the case of *Achalbala Bose v. Sarendra Nath Dey* (I. L. R. 24 Cal. 766). In discussing the question his Lordship has proceeded upon the construction of the words 'what is so found due to the plaintiff' in s. 88 of the Transfer of Property Act, and has observed: "According to the view expressed by the Allahabad High Court, the expression 'what is so found due to the plaintiff' in s. 88. means the amount referred to in the first paragraph of s. 86; in other words that the word 'so' refers not merely to the different heads of indebtedness mentioned in that paragraph, i. e., principal, interest and costs but also to the date there indicated. It appears to me that 'to attribute this force to the word so is opposed to that which is apparent from this first paragraph itself, for it will be noticed that in that paragraph the expression 'so due at the date of the decree' must refer to a point of time other than that by reference to which the amount mentioned in the earlier part of the clause is to be taken. This of itself would seem to justify the conclusion that the expression 'so found due' in s. 88 does not necessarily and obviously mean, found due at the date indicated in s. 86." With the utmost deference it must be submitted that the expression 'so due' must refer to something that has preceded and cannot have any reference to anything that follows. If they do not refer to the amount and the date referred to in s. 86 the words would be meaningless. The expression "in default of the defendant paying as therein mentioned" which precedes the expression *so due* has obvious connection with the latter expression. 'Therein mentioned' means mentioned in paragraphs 1 and 2 of s. 86. Now it would appear that *Suryanarayana's case* which is the foundation for holding that interest at contract date should be allowed upto the date fixed for payment and which was decided by two Judges was not noticed by Jenkins J. in *Achalbala's case* who alone is responsible for the decision of that case. The argument that the expression 'so due at the date of the decree, must refer to a point of time other than that by reference to which the account mentioned in the earlier part of the clause is to be taken' is clearly answered in *Suryanarayana case*, where the Judges have said: "We say this with reference to the concluding words of the first paragraph or declaring the amount so due at the date of such decree" (the italics are mine) the amount so due is the amount which will be due "on the day next hereinafter referred" that is the day to be fixed within the six months, as provided in the next paragraph and that amount may be declared at the date of the decree if the Court does not think it necessary to order an account" (20 Cal. at p. 364). As then already pointed

out, section 86 so far as it relates to the alternative decree when the decree does not direct accounts to be taken section 86 may be read as follows: "The Court shall make a decree, declaring (the amount so due) what will be due to the plaintiff for principal and interest on the mortgage and for his costs of the suit, if any, awarded to him, on the day next hereinafter referred to, at the date of such decree". This argument does not therefore help us in putting on the sections of the Transfer of Property Act construction which would enable the Courts to award interest after the fixed date, and the construction as put by the Privy Council upon the bare sections is to the same effect.

The next question then is how to reconcile s. 90 with the view that a mortgagee is not entitled to subsequent interest. Section 90 can only apply if the proceeds of the sale are insufficient to pay off the decretal amount and only when the defendant is personally liable. So far as the mortgaged property is concerned, the section has no application. The expenses in execution proceedings are the costs of the suit and they may increase since the date of declaring the amount in Court and the expression 'for the time being' may be explained in this way. The section makes no direct reference to interest. The section would apply when the mortgagee makes an application for personal remedy when that remedy exists. Section 97 refers to a special case and there is no reason why the expression in the third clause "in payment of all interest" be held to include interest after the due date and be not restricted to interest awardable under ss. 86 and 88 of the Act. The ultimate conclusion which Jenkins J. has come to is expressed in these words: "If this be so then the opinion, expressed at page 180 of the report of *Amolak Ram v. Lachmi Narain* to the effect that s. 209 of the Code of Civil Procedure cannot affect the special provisions of the Transfer of Property Act, would seem to be erroneous. The inference would rather appear to be that the provisions of the Transfer of Property Act are not *exclusive and exhaustive*; and further that it never was contemplated that a mortgagee in a suit, which, in its origin at any rate, was founded on equitable principles as firmly established in this Court as in the Court of Chancery in England, should be mulcted of his interest when his mortgagor is in default."

The decision may be summed up as follows (1) section 209 of the Civil Procedure Code applies to decrees in mortgage suits so far as interest after the date fixed for payment is concerned; (2) that the provisions of the Transfer of Property Act are not exclusive and exhaustive on the point of awarding interest; (3) that it was the established practice of the Calcutta High Court that a mortgagee should not be mulcted of his interest when the mortgagor is in default.

How far these considerations apply to Bombay is the next question. Section 209 of the Civil Procedure Code as amended by s. 20 of Act VII of 1888 is in *pari materia* with s. 210 of the same Code. It has been repeatedly ruled in Bombay that s. 210 does not apply to mortgage decrees. For the same reasons s. 209 should not apply to mortgage decrees. If the mortgagee cannot be subjected to the inconvenience of an instalment decree upon the wording of s. 210 he should not be entitled to the advantage s. 209 which is in the same words when these words preclude his being put to inconvenience. Besides a suit upon a mortgage is not a suit to recover money but an interest in immovable property (*Sarwar Hussain v. Yabu Mahamed* B. L. R. Sup. Vol. 879) and *Baida Nath v. Shewanand*, 22 Cal. at p. 150). The first decree to be made under ss. 86 and 88 is to that effect. It was also the ground made by the High Court at Allahabad for not allowing interest after the date fixed for payment, when the case of the *Maharaja of Bharatpur* was decided by that High Court. It was said: "Section 209 of the Code of Civil Procedure applies only to decrees for the payment of money and is in our opinion inapplicable to decrees for the sale of property" (*vide*: 23 All. at p. 184) Unless then the decisions under s. 210 of the Civil Procedure Code of the Bombay High Court are overruled it cannot be held in Bombay that s. 209 of the Code is applicable to mortgage decrees in Bombay. The second conclusion is that the provisions of the Transfer of Property Act are not exclusive and exhaustive. They must, therefore, be supplemented by some other law. As shown above s. 209 of the Civil Procedure Code is not applicable. Section 222 deals with interest on costs. No other provisions can be found enabling the award of interest. Section 209 may perhaps be applicable when s. 90 of the Transfer of Property Act is resorted to. Till then no question of interest after the date fixed for payment can be raised. Of course we may fall back on the general law of mortgage when the provisions of the Transfer of Property Act are held inexhaustive. But the point is still an open point in our Courts. The third conclusion is based upon the established practice of the Calcutta High Court. There is not such an established practice in our Courts but on the other hand the decisions quoted above negative such a practice.

The result then is that the Courts are bound to award interest at the contract rate down to the day fixed for payment; that whether interest can be awarded after that date is a question not yet settled by our High Court and remains an open question.

V. D. D.

RECENT ENGLISH CASES.

APPROPRIATION—Payment—Statute of limitations—Option of creditor to appropriate—Limit of exercise of option—Set-off—Solicitor and client—Solicitor's bill—Sum received on account of client. The executor of a deceased solicitor brought an action in 1902 to recover costs alleged to be due to his testator's estate from the defendant, of which a bill had been delivered to the defendant, together with a cash account, on December 2, 1899. The items of the bill extended over a period from 1878 to 1899, and, the Statute of Limitations being pleaded, the judge at the trial gave judgment for the defendant in respect of all items prior to 1893, as being statute-barred. He referred the rest of the bill to a master for taxation, and to take the cash account from 1893, directing that credit should be given to the defendant for all sums of money received by the plaintiff's testator for or on account of the defendant, in respect of, or which ought to be treated as reducing or discharging, the bill of costs so taxed. Upon taxation the defendant brought in a surcharge in respect of a sum of 66*l.*, which had been received by the plaintiff's testator, as the defendant's solicitor in an action brought by the defendant, in 1894, and not accounted for to the defendant. No cash account had been delivered by the plaintiff's testator to the defendant except the account of December 2, 1899, which, through an inadvertence, contained no entry of the said sum of 66*l.* The plaintiff claimed that this sum should be treated as appropriated to payment or satisfaction of items which had accrued due from the defendant to the plaintiff's testator prior to 1893:—*Held*, that the said sum of 66*l.* could not be set off against the statute-barred items under the statutes of set-off; and that, assuming that the plaintiff's testator would have had a right to appropriate the said sum to these items, yet, there having been no such appropriation, it was not, having regard to the terms of the judgment of the learned judge at the trial, open to the plaintiff so to appropriate the said sum subsequently to that judgment; and therefore that the surcharge in respect of the said sum of 66*l.* must be allowed. *Smith v. Betty* (1903, 2 K. B. 317).

CONTEMPT OF COURT—Publication tending to prejudice fair trial—Newspaper—Cause not yet pending in High Court—Jurisdiction of High Court to attach. Where, a person having been charged before the petty sessions with an indictable offence triable only at the Assizes, matter is published in a newspaper tending to interfere with the fair trial of the charge, the High Court has jurisdiction to attach the publisher of such matter for contempt of Court, notwithstanding that at the time of the publication the person charged had not yet been committed for trial. *The King v. Parks* (1903, 2 K. B. 432).

GAMING—Whist—Absence of element of wagering—Licensing Act, 1872 (35 & 36 Vict. c. 94) s. 17. To constitute gaming the game played must be one which involves the element of wagering; each player must have a chance of losing as well as of winning. A number of persons hired a room in an hotel for the purpose of playing whist. They played for prizes, which were not subscribed for by the players, but were given by third persons:—*Held*, that the whist so played did not amount to gaming within the meaning of s. 17 of the Licensing Act, 1872. *Lookwood v. Cooper* (1908, 2 K. B. 428).

INSURANCE, MARINE—Voyage policy—Construction—Termination of risk—Insurance for period after arrival of ship—"Days," how to be reckoned. In a policy of insurance on a ship the risk was described as being for a voyage to a named port "and for 30 days in port after arrival however employed," and as running until the ship "hath moored at anchor as above in good safety." The ship arrived in port and was moored at anchor in good safety at 11.30 A.M. on August 2, 1902. She remained in port until September 1, 1902, and was totally lost through perils insured against at 4.30 P.M. on that day:—*Held*, that the expression "30 days" in the policy meant thirty consecutive periods of twenty-four hours each, the first period of which began to run at 11.30 A. M. on August 2, and, therefore, that the policy had ceased to cover the risk when the loss occurred. *Cornfoot v. Royal Exchange Assurance Corporation* (1903, 2 K. B. 363).

NEGLIGENCE—Liability—Intervening act of third party—Trespassers; interference by—Effective cause of damage. The defendants' servants shunted some trucks and a brake-van, all coupled together, on to a siding which was on an incline running down to a level crossing over a highway. The siding had a catch-point to prevent vehicles, if set loose, from running down the incline; but, for the convenience of their shunting operations, the defendants' servants did not place the trucks and van beyond the catch-point, but screwed down their brakes, and left them in a position in which they would not have caused any damage if not interfered with. Some boys, trespassing on the siding, uncoupled the van from the trucks and released its brake, so that it ran down the incline and injured the plaintiff, who was lawfully passing along the highway over the level crossing. The defendants were aware that boys were in the habit of trespassing on the siding and meddling with vehicles placed upon it. At the trial of an action by the plaintiff, the jury found that the van was in a safe position as and where left by the defendants, unless interfered with afterwards; that the accident would not have happened if the van had not been interfered with; that the interference was the act of trespassers, who acted negligently; that the danger of interference causing injury was known to and could have been

guarded against by the exercise of reasonable care on the part of the defendants; and that the negligence of the defendants in not placing the van beyond the catch-point was the effective cause of the accident. Upon those findings the jury assessed damages, and Kennedy J. gave judgment for the plaintiff: [1902] 1 K. B. 618. On appeal by the defendants:—*Held*, that the evidence did not support the findings of negligence on the part of the defendants; and, therefore (applying the rule in *Engelhart v. Farrant*, [1897] 1 Q. B. 240, 243), as negligence on their part was not the effective cause of the accident, they were not rendered liable through the interference of trespassers.—*McDowall v. Great Western Railway Company* (1903, 2 K. B. 331).

PRINCIPAL AND AGENT—*Limited authority—Contract made by agent in name of principal, but for his own benefit—Liability of principal.* B an underwriter, was employed by certain other underwriters as their agent to underwrite policies in their names and on their behalf. B, purporting to act under that authority, underwrote in their names a policy guaranteeing to the plaintiffs that a certain company would repay to the plaintiffs the amount of certain advances made by the plaintiffs to the company. At the time that B. so underwrote the said policy the company was to the knowledge of B in fact insolvent. B was personally interested in the company being kept afloat, and in underwriting the policy was acting for his own interests and not for the interest of his principals. The company having failed to repay the advances, the plaintiffs sought to recover from B's principals upon the policy:—*Held* that, having regard to the object with which B. subscribed the names of his principals to the policy, he did not underwrite it on their behalf, and that consequently, as he had exceeded his authority, they were not liable to the plaintiffs. *Hambro v. Burnand* (1903 2 K. B. 399).

RAILWAY—*Level crossing—Road raised on inclined planes—Repair of roadway—Railways Clauses Act, 1845 (8 & 9 Vict. c. 20) s. 16.* A railway company, being authorized to carry their railway across a high road upon the level, constructed the railway at a slightly higher level than the road, and, in order to bring the road up to the level of the railway, raised it by means of inclined planes on either side of the railway under the powers conferred by s. 16 of the Railways Clauses Act, 1845:—*Held*, that there was no obligation upon the railway company to repair the roadway upon the inclined planes, notwithstanding that their act in inclining its surface might have made its maintenance more expensive than before. *West Lancashire Rural District Council v. Lancashire and Yorkshire Railway Company* (1903, 2 K. B. 394).

WILL—*Absolute gift—Gift over on death "without a will and childless"—Repugnancy.* An executory gift over in the event of the donee of an

absolute interest dying "without a will and childless" is void for repugnancy. *In re Dixon. Dixon v. Charlesworth* (1903, 2 Ch. 458).

GLEANNING.

The Liability of Contractors.

EXCEPT where local authorities are their own contractors, that is, where they do works which they are authorized to do by their own workmen, the liability of contractors must always be a question of considerable interest to them as well as one of recurring interest. The manner in which such liability may arise is manifold. It may arise through personal injuries being received by a passer by, as in *Penny v. Wimbledon Urban Council* (1899), 53 J. P. 406, or as in *Taylor v. Greenhalgh* (1874), 38 J. P. 599, or as in *Hardaker v. Idle Local Board* (1896), 60 J. P. 196. or as in *Tucker v. Axbridge Highway Board* (1889), 53 J. P. 87, or damage to property, as in *Ilford Gas Company v. Ilford Urban Council*. *Jackson. Third Party* (1903), or in fifty other ways.

In *Tucker v. Axbridge Highway Board* (*supra*), the defendants, a highway board, had left a heap of stones on the side of a road within their jurisdiction at a place which was used as a depot for stones used in repairing the road. The contractor, a servant of the defendants, in placing stones there had allowed them to project a few inches on the road. A person when driving along the road one dark night drove against the heap and thereby met with his death. His widow and children brought an action under Lord Campbell's Act against the defendant board. It was held that the action was maintainable, and that inasmuch as the so-called contractor was really a servant of the defendants they were liable.

In *Reid v. Darlington Highway Board* (1877), 41 J. P. 581, the accident arose in a similar way, but the liability of the defendant board was not established. In that case the defendant board, finding that part of the wall of a bridge needed repair, instructed their surveyor to employ a contractor to do the work. The contractor thereupon, by his servants, did the work and the surveyor of the board did not interfere. In the course of the work the contractor's servants left stones in the highway, which was not lighted at night, and R, travelling in a gig, ran against them and was injured. It was held that there was no evidence upon which the board or its surveyor could be held liable for the injury to R.

In *Hardaker v. Idle District Council* (*supra*), the district council, being about to construct a sewer under their statutory powers, employed a contractor to construct it for them. In consequence of his negligence in carrying

out the work, a gas main was broken and the gas escaped from it into the house in which the plaintiffs (a husband and his wife) resided, and an explosion took place by which the wife was injured and the husband's furniture was damaged. In an action by the plaintiffs against the district council and the contractor, it was held by the Court of Appeal (reversing Wright, J.) that the district council owed a duty to the public (including the plaintiffs) so to construct the sewer as not to injure the gasmain; that they had been guilty of a breach of this duty; that notwithstanding that they had delegated the performance of the duty to the contractor, they were responsible to the plaintiffs for the breach, and that they were accordingly liable in damages to them for the injuries that had been received.

In *Penny v. Wimbledon Urban Council* (*supra*) the council, acting under section 150 of the Public Health Act, employed a contractor to make up a highway which was used by the public but had not become repairable by the inhabitants at large. In carrying out the work the contractor negligently left on the road a heap of soil unlighted and unprotected. A person walking along the road after dark, fell over the heap and was injured. In an action against the district council and the contractor to recover damages for the injuries sustained, the jury found a verdict for the plaintiff. The action was tried before Bruce J. The contractor had paid into Court the sum of 75*l.* whilst denying liability, and as the jury had found a verdict for 50*l.*, the learned judge directed that judgment should be entered for him with costs. He also held that the district council could not avail themselves of the payment into court by the contractor, and directed that judgment should be entered against them with costs. This judgment against the district council was, of course, confined to costs. Against this judgment the district council appealed to the Court of Appeal, while it was endeavoured to show that they were under no liability whatever. The court, however, affirmed Bruce J. and held that judgment was rightly entered against the council. Vaughan Williams, L. J., said: "As to the question of the liability of the council for the acts of the contractor, there is hardly any subject on which the course of the authorities, down to the recent case of *Hardaker v. Idle District Council* (*supra*), has been so uniform and clear. In cases like the present, where a statutory authority has power to do something to a road which involves stopping it, or to do something to it which will make it dangerous while it is being done, there is a duty cast upon them to take care that the Queen's subjects are not injured by any carelessness in the doing of that which has to be done. This is expressed in the judgment in *Pickard v. Smith* (1861), 10 Q. B. (N. S.) 480, thus: 'If an independent contractor is employed to do a lawful act, and in the course of the work he or his servants commit some casual act of wrong or negligence, the employer is not answerable. The

rule is, however, inapplicable to cases in which the act which occasions the injury is one which the contractor is employed to do; nor, by parity of reasoning, to cases in which the contractor is entrusted with the performance of a duty incumbent upon his employer, and neglects its fulfillment, whereby the injury is occasioned.' "

The most recent of this class of cases is *Ilford Gas Company v. Ilford Urban Council; Jackson, Third Party (supra)*, recently decided by the Court of Appeal. The third party John Jackson, was a contractor, and he had entered into a contract with the Ilford council to construct for the council certain sewage outfall works and certain main sewers leading thereto. A sewer that had to be constructed ran along a public road in the urban district called Green Lanes, and in this road a gas pipe or main was laid. This gas pipe or main had been laid down by the gas company many years before and in the course of laying the sewer the contractor came across the gas main in three different places. Upon coming across the gas main, the contractor asked for directions as to what he should do or how it should be supported in the places where it ran along the sewer trench. He was directed by the engineer to support it by brick piers nine feet apart. This the contractor did and was credited with such piers as extras. Subsequently, some little time after the sewer trench had been filled in, the gas main was found to be fractured at two of the three places where it was met with. The gas company thereupon brought an action against the district council, alleging negligence against them in supporting the gas main or in packing and ramming the soil under the same. The district council brought in the contractor as third party, alleging that if there was negligence it was his negligence. The jury at the trial of the issue between the gas company and the district council found a verdict for the gas company that there was negligence on the part of the district council, adding that there was no negligence on the part of the contractor, and assessed the damages at 200*l*.

The terms of the contract between the district council and the contractor need only be briefly referred to here. It was provided in one clause that "such alterations, additions, and omissions to or from the works as described in the specification, plans and drawings as the contractor shall from time to time be required to make by order in writing sanctioned by the district council under the hand of their clerk or the said engineers, and no others shall be made by the contractor. And such sum shall be paid by the district council to, or be rebated or allowed to the district council by the contractor in respect of such alterations, additions, or omissions as the said engineer shall certify under his hand to be reasonable." By another clause it was provided that "any damage or loss which may happen to the works or the materials, implements or tackle therein used during the progress thereof which shall arise from theft, spoiling, decay, waste, wind, rain or fire shall be made good by the contractor to the satisfaction of the engineer without any extra charge. And the contractor shall save the district council harmless and indemnified from all claims and actions for or in respect of any damage or injury to persons or property arising from or occasioned by the neglect, default or misconduct of the contractor or of any person employed by

the contractor or otherwise howsoever from or by the execution of the works."

Lawrence, J., before whom the case was tried, held that as between the district council and the contractor the contractor was liable under the contract to indemnify the district council in respect of the action brought against them by the gas company, and accordingly entered judgment against the contractor in favour of the district council. And on the authority of *Howard v. Lovegrove* (1870), L. R. 6 Ex. 43, he entered judgment against the contractor in favour of the council for the plaintiff's costs in the action for the council's costs in the action brought against them as between solicitor and client, and for the council's costs in the third party procedure. From this judgment the third party, the contractor, appealed, and on the hearing of the appeal the Court of Appeal sent the case between the district council and the contractor down to be tried afresh before a judge and special jury, the issue to be tried being—was the injury due to the nature of the works which the contractor was bound or directed to execute, or to the mode in which the works were executed? On the trial before a judge and special jury as directed, the jury found in favour of the contractor, that he did his work satisfactorily. The contractor was thus freed from any charge of negligence. The effect of the finding of the jury was that the injury was due to the nature of the works which the contractor was bound or directed to execute.

On the matter coming before the Court of Appeal for further argument that court held that on the true construction of the contract, the contractor was not liable, and directed that judgment should be entered for him with costs. The whole liability of the action thus fell upon the district council, and the district council alone.

To a large extent the liability of local authorities for work done for them by contractors depends upon the terms of the contract they have entered into. It is right and proper that contractors should be held liable for their own negligence, but when it is attempted to make them liable for negligence which is not theirs—in other words, to make them general insurers—very precise words are necessary. There were no such words in the *Ilford* case. *Justice of the Peace.*

REVIEWS.

The Central Provinces Tenancy Act (XI of 1898). By M. B. DADABHOY, of the Middle Temple; Barrister-at-Law; and the late Acting Government Advocate, Central Provinces. BOMBAY: Education Society's Steam Press. 1903. Roy. 8 vo. Pages x and 929.

THIS is a commentary on an Act which largely affects the Central Provinces. This Act was placed on the Statute book on the 21st October 1898; and it superseded its predecessor, Act IX of 1838. The present Act has made important and radical changes in the transfer and acquisition of *sir* rights, in the position and status of occupancy and ordinary tenants and in raising the condition of sub-tenants. One of its noteworthy features is the withdrawal of the power of alienation given for the first time to occupancy

and ordinary tenants by the Act of 1883. The commentaries on the Act are as exhaustive as its importance demands. They consist of explanatory notes, a discrimination and discussion of cases decided under the provisions of the Act and its predecessors, and of cases decided in other parts of India under enactments analogous to the one in question, and rules made and executive instructions issued by the Government of the Central Provinces. It is a relief to find that the commentaries are very carefully and ably prepared; and one marked feature which it possesses, *viz.*, of discussing cases decided by the four High Courts in India and of appropriate English cases, makes it a useful book of reference not only in the Central Provinces but in the rest of India as well. The book also contains Recovery of Rent (Bengal) Acts (X of 1859, XIV of 1863, XXI of 1872); The Central Provinces Tenancy Bill, 1880; Report of the Select Committee; Proceedings of the Imperial Legislative Council, The Central Provinces Tenancy Act (IX of 1883); Statement of Objects and Reasons, and the Central Provinces Tenancy Bill, 1898, and Proceedings of the Imperial Legislative Council in passing the bill into law. The new Act gave occasion to a Resolution from the Chief Commissioner, Central Provinces, which is set out in full. Thus, the present volume embodies all available information on the Tenancy Laws as obtaining in the Central Provinces.

A Manual for Colonial Commissioners. By GEORGE EUGENE SOLOMON, Solicitor, England, a Commissioner for oaths, England, British Colonies, and India. LONDON: Sweet and Maxwell, Limited, 3 Chancery Lane, W. C. 1903. Roy. 16 mo. Pages viii and 87. Price 3s. net.

THE increased facilities for locomotion from one country to another, the frequency with which people move from place to place, and the long arm of commerce have of late invested the law of commissions with an importance which it never had before. This manual of information on colonial commissions for oaths, affidavits and proofs in the United Kingdom, for record in British Colonies and India and the fees thereon, is therefore consequent upon the continuous professional interest evinced in its subject-matter. Its part I deals with general observations and the procedure thereunto; in part II are given a tabular list of British Colonies and Dependencies and details of the Commissions for the supreme Courts thereof, and forms of British Colonial Commissions; and part III details Commissionerships for deeds in the United Kingdom for the United States of America, form of American Commission, and list of American States granting Commissionerships. There are several appendices, of which the first sets out forms of petition, certificate of fitness, declaration, in proof, and form of American certificate of fitness; the second tabulates the names of the Commissioners in the United Kingdom for British Colonies and Dependencies, the third enumerates the names of the commissioners of deeds in

Great Britain for American States ; while the fourth and last gives a list of British Colonies accepting Home-sworn affidavits. This little hand-book contains all available information relating to the subject with which it deals ; and forms an indispensable manual of reference for the legal profession throughout the English-speaking world.

The Oldest Code of laws in the world: the Code of Laws promulgated by Hammurabi, King of Babylon, B. C. 2285-2242. Translated by C. H. W. JOHN, M.A., Lecturer in Assyriology, Queen's College, Cambridge. EDINBURGH: T. & T. Clark, 38 George Street. 1903. Cr. 8vo. Pages xxii and 88. Price 1s. 6d. net.

THE Code of Hammurabi is one of the most important monuments in the history of the human race, containing as it does the laws which were enacted by a King of Babylonia in the third millennium B. C. This Code was, nearly two thousand years later, made a text-book for study in the schools of Babylonia, being divided for that purpose into some twelve chapters and entitled, after the semitic custom, *Ninu ilu sirum*, from its opening words. In Assyria also, in the seventh century, B. C., it was studied in a different edition apparently under the name of "The Judgments of Righteousness which Hammurabi, the great King, set up." This Code was until recently studied from fragments alone but as a result of the explorations carried on at Susa under the auspices of the French Government, has been found a monument, only disinterred in January 1902. This monument, we are told, consists of a block of black diorite, nearly eight feet high, found in pieces, but readily rejoined. It contains on the obverse a very interesting representation of the King Hammurabi, receiving his laws from the seated sun-god, Samas, 'the judge of heaven and earth'. Then follow, on the obverse, sixteen columns of writing. On the reverse side are twenty-eight columns with more than 2500 lines of inscription. The inscription on this monument was copied, transcribed and published, in a superb quarto volume by October 1902, by Father V. Scheil. This was very soon followed by Dr. H. Winckler's rendering of the Code. These are, however, highly scientific productions, and are meant more for the delectation of those savants who have made this branch of knowledge a special study. And a necessity existed for supplying a literal translation in English of the inscriptions, which would place the chief features of the Code before a wider public, anxious to learn the contents of the monument and yet not having the requisite preparatory study to assimilate the information set out in the monographs published hitherto. The learned professor, therefore, deserves to be congratulated on seizing the opportunity and placing within an easy reach of the public a translation which gives an idea of what the code really meant.

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HINDU LAW, 1902.

WE are familiar with the doctrine that immemorial custom is transcendent law and clear proof of usage will outweigh the written text of law. The Roman law also held that ancient customs were like laws, and that customs could not only interpret law (*optima legum interpretis consuetudo*) but also abrogate it. Where in support of an alleged family custom, in derogation of the ordinary law four instances, of a comparatively modern date, were adduced the Privy Council held that such a custom could not be supported on so slender a foundation (*Chandika v. Munakunwar* (1)). A custom showing that a grand-son, whose father is dead, succeeds to the grand-father's estate in preference to a surviving-uncle does not prove by itself that the rule of lineal primogeniture applies in the family in case of collateral relationship. But the custom of lineal primogeniture as the rule of succession to an impartible *raj* was held to be proved on (i) oral evidence to show that it was well understood in the family and in families belonging to the same group that no descendant of a younger branch could take until all the elder branches were exhausted, (ii) decrees, relating to disputes in such families in which it was decided that the rule of succession was lineal primogeniture, and (iii) evidence that in the family the heir-apparent and those in immediate succession were dignified in the order of seniority with titles denoting precedence (*Mohesh v. Satrugan* (2)). There is no inconsistency between a custom of impartibility and the right of females to inherit; and the general law must prevail, unless it is proved that the custom extends to the exclusion of females (*Ram Nundun v. Janki Koor* (3)).

As observed, in a similar article, last year, Hindu law is the personal law of the Hindus, and Hindu families are governed by the law of their

(1) 4 Bom. L. R., 376; 24 All., 273.

(2) 4 Bom. L. R., 372; 29 Cal., 343.

(3) 4 Bom. L. R., 464; 29 Cal., 528.

• **Migration** origin and not of their domicile. The doctrine, that Hindu families migrating from one part of the country to another carry with them the laws and customs prevailing in the province from which they have migrated, has been further confirmed by the Privy Council in *Parbati Kumari v. Jugdis* (4).

Though the adoption of a sister's, mother's sister's or father's sister's son is invalid among the three regenerate classes (*Bhugwan Singh v. Bhugwan Singh* (5)), yet the adoption of a sister's or daughter's son,

• **Adoption.** among the Sarasvat Brahmins of Kanara, Bohra Brahmins of the North-Western Provinces and Brahmins of Southern India has been upheld, time after time, on the ground of custom (*Manjunath v. Kaverihai* (6); *Gowri v. Shivram* (7); *Chain v. Parbati* (8); *Vayadinada v. Appu* (9)). A mother succeeding as heir to her son, who has died unmarried, can validly make an adoption (*Payappa v. Appanna* (10)), but a full bench of the Bombay High Court has now decided that a grandmother in similar circumstances has no power to make an adoption (*Ramkrishna v. Shamrao* (11)). When a widow adopts with the full authority of her husband, the adoption even into a joint family is valid, and the adopted son takes an interest in the property of the family (*Bachoo v. Khushaldas*, (12)). The consent of the Government or of the *bhaubands* is not essential to the validity of an adoption among *vatandars* (*Bulajji v. Datto* (13)).

For mutual rights of succession an adopted son is completely severed from his natural family. His connection with his natural family continues only as regards marriage, adoption, and mourning. In determining, therefore, the degree of propinquity to a deceased adopted son in his adoptive family, a claimant should not be regarded as next of kin because of his relationship as natural father, which, for purposes of inheritance, is immaterial (*Muthayya v. Minakshi* (14)).

In the case of *Muthura Naikin v. Esu Naikin* (15) it was laid down that the custom of adoption of a daughter by a prostitute could not be recognised by Courts of law, and such adoption conferred no right on the person adopted. But where a woman, though a prostitute by profession, is not a *naikin* and is not attached to any temple, takes a daughter in adoption with the object that she may have some one who after her death could perform her funeral ceremonies and inherit her property, and there is nothing to show that she contemplated the girl following the profession of a prostitute, the adoption is valid (*Manjamma v. Sheshgiri Rao* (16)). The

(4) 4 Bom. L. R., 366; 29 Cal., 433. (5) 1 Bom. L. R., 311; 21 All., 414. (6) 4 Bom. L. R., 140. (7) 1884, P. J., 30. (8) 14 All., 41. (9) 9 Mad., 44. (10) 23 Bom., 327. (11) 4 Bom. L. R., 315. (12) 4 Bom. L. R., 883. (13) 4 Bom. L. R., 762. (14) 25 Mad., 394. (15) 4 Bom., 545. (16) 4 Bom. L. R., 119.

Madras High Court has always held such adoptions to be valid (*Venku v. Mahalinga* (17)). But even in Madras adoption by a dancing woman of a girl with the intention of bringing her up for prostitution is held invalid (*Sanjivi v. Jalajakshi* (18)).

When a guardian purports to mortgage the minor's property on behalf of his ward, the lender is bound to enquire into the necessities of the loan

Guardian. and to satisfy himself as well as he can with reference to the parties with whom he is dealing that the guardian is acting

in the particular instance for the benefit of the minor. If he does enquire and acts honestly, the real existence of an alleged necessity is not a condition precedent to the validity of the charge, nor is he bound to see to the application of the money. It is only when there has been at the time of the loan either real necessity for it or due enquiry as to such necessity that the lender can obtain a charge over the minor's property (*Dalibai v. Gopibai* (19)).

When the grant of an estate to a person proceeds from the grace and favour of the Government in exercise of its sovereign authority, the estate be-

Self acquired property. comes the separate and self-acquired property of the grantee, though it would possess all the incidents of the family

tenure of the old estate as an impartible *raj*. It is free from the coparcenary rights of succession of the other branches of the grantee (*Ram Nundun v. Janki Koor* (20)). Similarly, savings effected, and property purchased thereby, by the holder of an impartible *raj* become his self-acquired property (*Parbati v. Jagdis* (21)). The property descending to a man either by inheritance or by will from his nephew becomes his self-acquired property (*Timannacharya v. Balacharya* (22)).

The origin and nature of the Mitakshara doctrine of joint family property is very ably expounded by Mr. Justice Bhashyam Ayyangar in *Sudarsanam v. Narasinhulu* (23). The disruption of a joint family can-

Joint family. not be effected by an order of Court against the intention of the parties, unless it is followed by an actual conversion of the joint tenancy into a tenancy in common or an actual partition by metes and bounds (*Maditnarayan v. Banglal* (24)).

A member of a joint family, not being a son of the debtor, would be bound by a decree and sale of the family property under the decree, although he was not a party to it, if the creditor or the purchaser, as the case may be, could prove that the debt had been contracted for the benefit of the family or the purposes of a trading business in which they were interested, and if the decree was substantially one against them, although in form it might be

(17) 11 Mad., 383 (18) 31 Mad., 270. (19) 4 Bom. L. R., 106 (20) 2 Bom. L. R., 664.
(21) 2 Bom. L. R. 765 (22) 4 Bom. L. R., 257 (23) 25 Mad., 149 (24) 29 Cal., 797.

against the head member or members of the family, who contracted the debt. This would especially be so, if the other co-parceners were minors at the time the debt was contracted and the suit was brought (*Buldeo v. Mobarak* (25)). This is also the view of the Bombay High Court (*Hari v. Jairam* (26)); *Sakharam v. Devji* (27)). But if parties to a document intended that all the members of a joint family should execute it, it could not take effect by reason that the person who had alone executed it happened to be the managing member, and that the debt was recited to have been incurred for the benefit of the family (*Sivasami v. Sevugan* (28)).

It may be laid down as a general rule, looking to the recent decisions of the Calcutta and Allahabad High Courts, that all members of a joint family should be made parties to a mortgage suit, whether they were executants or non-executants of the mortgage, if it was sought to make their interests liable under the mortgage (*Kanharia Lal v. Roj Bahadur* (29); *Bhuvani v. Kollu* (30); *Debi-Dat v. Jadu Rai* (31); *Lala Suraj Prasad v. Golab Chand* (32)). The mortgage of an undivided share which under a partition has been allotted to another co-sharer cannot, in the absence of fraud, be enforced by the mortgagee against the share originally mortgaged, but the mortgagee's sole remedy is to proceed against the share which has been allotted to his mortgagor in lieu of the share mortgaged (*Amolak v. Chandan* (33)). The Bombay High Court has held that in such a case the partition will be re-opened and the mortgaged property will be allotted to the share of the mortgagor, and that in place thereof, unencumbered property of a similar value will be allotted to the share of the other co-sharers from the property allotted to the mortgagor (*Lakshman v. Gopal* (34)). This case has not been referred to in the Allahabad case.

The manager of a joint-family may make ordinary gifts or presents on suitable occasions either to the members of the family or to strangers, but this power must be confined to such occasions as are usual and to such presents as are customary. A father, who is the head of a joint-family, cannot, on the point of death, make gifts to his children out of joint-property (*Bachoo v. Khushaldas* (35)).

It is now well settled by a series of decisions that under the Mitakshara law, as it is administered in Bombay and Madras presidencies, one coparcener may dispose of ancestral undivided estate by private contract (sale or mortgage) to the extent of his own share. He cannot alienate or encumber more than his own share unless (a) justifying necessity, material or spiritual, be shown; or (b) all the coparceners

(25) 29 Cal., 583

(26) 14 B.M., 597

(27) 28 Bom. 372.

(28) 25 Mad., 389.

(29) 24 All., 211

(30) 17 All., 537

(31) 24 All., 459

(32) 28 Cal., 517

(33) 24 All., 488

(34) 23 Bom., 365.

(35) 4 Bom. L. R., 522.

to be affected give express or implied consent. A full bench of the Madras High Court has decided that a suit by a purchaser from a member of an undivided family, of his undivided share, is maintainable, after the death of the vendor, against the surviving members, to enforce the sale (*Aiyagari Venkataramayya v. Aiyagari Ramayya* (39)).

Under the Mitakshara law, as administered in Bengal and North-West Provinces, the principle of alienation by private deed has not been adopted. In these provinces, a purchaser from an undivided member though he be a purchaser for value, acquires no valid title as against the alienor or the undivided family of which he is a member. In these provinces one sharer has no authority *without the consent* of his co-sharers to dispose of his undivided share in order to raise money on his own account and not for the benefit of the family.

The ordinary manager of a joint family and a father who is the head of his family enjoy equal powers as regards alienation of family property (see the very able judgment of Mr. Justice Batty in *Nathaji v. Sitaram* (40)). A younger member of a joint family can alienate or otherwise deal with immoveable property belonging to the family, for family necessity, whenever he is put forward to the outside world by the elder members of the family, as the managing member (*Mudit Narayan v. Ranglal* (41)).

A gift is valid as between a donee and a stranger, though at the time when the gift is made the donor may have been out of possession and though

the donee may never have obtained possession, provided
 Gift • that the donor has done all he could to complete the gift

(*Jaitaram v. Ramkrishna* (42)). When property is given in gift to two persons jointly, there is no presumption that the donor intended to annex the condition of survivorship which might have the effect of excluding the heirs of one of the donees (*Bui Divili v. Becharadas* (43)).

In Calcutta, Stanley J following the well-settled English rule has decided that where a gift is made to a class, some of whom are incapable of taking, the disposition fails as to all. Section 15 of the Transfer of Property Act (IV of 1882) and section 102 of the Indian Succession Act (X of 1865) lay down similar principle. He further decides that even though all the members of the class are born before the gift takes effect, if it was antecedently possible that they might have not been so born, and the fact that the gift might have included objects too remote is fatal to its validity irrespective of the event (*Rojomoyee v. Troylukho Mohiney*, (44)). In a later case Pratt J. expresses a doubt whether the said rule is always applicable in this country (*Gooroo Das v. Sarat Chunder* (45)). It may also be observed

(39) 25 Mad., 690.

(40) 4 Bom. L. R., 587.

(41) 29 Cal., 797.

(42) 4 Bom. L. R., 754 (43) 4 Bom. L. R., 103 (44) 29 Cal., 260 (45) 3 Cal., 699.

that the Privy Council has ruled that such a gift, where there is no other objection to it, enures for the benefit of those members of the class who are capable of taking. Their Lordships considered that it was not necessary to view the transaction as though it were to be determined by rules of construction drawn from English law and applicable to English deeds of gift (*Rai Bishen Chund v. Asmaida Koer* (46); *Bai Motivahu v. Bai Mamubai* (47)). The view of the Privy Council has been adopted by the High Courts of Bombay, Calcutta and Madras (15 Bom., 543; 15 Bom., 652; 18 Bom., 7; 20 Bom., 571; 22 Bom., 533; 12 Cal., 663; 12 Mad., 393). These cases have neither been referred to nor distinguished in the judgment of Stanley J.

The rule laid down in the leading case of *Tagore v. Tagore* (48) that the donee of a gift under a will must be a person in existence capable of accepting it at the time when it takes effect, applies to an idol. An idol cannot be said to have juridical existence, unless it has been consecrated by the appropriate ceremonies and so has become spiritualized. Before this the deity of which the idol is the visible image does not reside in the idol. The deity, no doubt, is in existence, but there is no personification of the deity to whom a gift can be made. Hence, no valid gift can be made to an idol not in existence at the time of the testator's death (*Kojomoyee v. Troylukho Mohinoy* (49), following 25 Cal., 405).

A widow does not lose her right to separate maintenance by reason of her leaving her husband's house, provided she does not leave it for immoral purposes. And it has been established by a series of decisions of

Maintenance.

the Bombay, Madras, and Allahabad High Courts that a moral obligation exists on the part of a father-in-law to maintain his dependent daughter-in-law, and that obligation ripens into a legal one as against the heir, who has inherited his ancestral property. The Calcutta High Court adopting this view has laid down (1) that there is no distinction between the right of maintenance of a widow under the Dayabhaga and under the Mitakshara, (2) that the moral obligation on the part of the father-in-law may remain dormant or in abeyance, but is not annulled, if the widow has taken up a residence with her own parents or relations and they support her, (3) that the moral obligation subsists continuously and can be called into activity if she should at any time fall into necessitous circumstances; and (4) that whether it be dormant or active at the death of the father-in-law, it devolves as a subsisting obligation upon his heirs and is transformed into a legal obligation (*Siddeswamy Dasse v. Janardan*, (50)). The right of a widow to maintenance is not a charge upon the estate of her deceased husband unless and until it is fixed and charged upon the estate (a) by a decree, or

(46) 11 I. A., 184; 6 All., 560.

(47) 24 I. A., 93; 19 Bom., 647.

(48) 9 B. L. R., 399

(49) 29 Cal., 260

(50) 29 Cal., 557.

(b) by agreement. If such estate has been alienated and is in the hands of a *bona fide* transferee, the widow cannot follow the property, even though it be the case that the transferee had notice of her claim for maintenance (*The Bharatpur State v. Gopal Dei* (51)). But it would be otherwise if the transfer has been made with the intention of defeating the widow's claim (*Ram Kunwar v. Ram Dai* (52); *Shri Biharilalji v. Bai Rajbai* (53)).

By an agreement entered into by the members of a family, of whom plaintiff was one, the parties became completely divided in interest in respect of all their property, but so far as certain village was

Partition.

concerned, it was agreed that plaintiff should receive one-fourth of the net income from the eldest member of the family, who was to manage it. Plaintiff sued afterwards for partition by metes and bounds of his one-fourth share in this village and it was held that the agreement was no bar to the suit (*Subbaya v. Rajaram*, (54)). Where in a partition suit the plaintiff seeks a complete partition of the whole of the family property, and in the course of the proceedings it appears that plaintiff has in his possession some portion of the family property which he has not mentioned in the plaint, but at an early stage of the suit he expresses his willingness to bring the property into the hotchpotch, his suit cannot fail on the score of partial partition (*Venkata v. Bhishyakarlu Naidu* (55)). Where some of the co-parceners in a joint-family are minors, partition is not a matter of course but is in the discretion of the Court. Some malversation, danger, or loss, to the minors on the one hand, or some benefit or advantage on the other hand, must be proved before a Court will compel partition in such cases (*Bachoo v. Khuridas* (56)).

The Privy Council has decided that, according to Mitakshara, the doctrine of survivorship is not limited to unobstructed succession and to the succession to the joint property of re-united co-parceners.

Inheritance and Succession

On the death of a daughter her sons, therefore, succeed to the property inherited by her from her father as heirs of their grand-father, and take it as ancestral property which has been devolved upon them as members of a united family under the ordinary law of inheritance, *viz.*, joint with right of survivorship. It is the right to partition which determines the right to take by survivorship, and where there has been no partition the survivor takes (*Venkayamma v. Venkataramanayya* (57), overruling *Jasoda v. Shoo Pershad* (58) and *Saminadha v. Thungathan* (59)).

(51) 44 A.L.J. 160.

(52) 22 A.L.J. 326

(53) 23 Bom. 342.

(54) 25 Mad. 585.

(55) 4 Bom. L. R. 543.

(56) 4 Bom. L. R. 883.

(57) 4 Bom. L. R. 667; 25 Mad. 678.

(58) 17 Cal. 22.

(59) 19 Mad. 70.

Sons of a brother who is dead share along with the surviving brothers according to Mayukha. But this rule does not go beyond brothers and brother's sons (*Chandica v. Munakoer* (60)).

In Bombay father's half sister is entitled to succeed to the property of a deceased person in preference to his maternal uncle (*Saguna v. Sada-shiva* (61)).

Also the daughter is a preferential heir to the widow of a predeceased son (*Sita Ram v. Ohintaman* (62)). The head-note of this case is inaccurate, and some of the remarks in the judgment are not in accordance with the law of the Maharashtra School which it follows.

According to Mitakshara the brother and not the widow of a childless man takes an ancestral estate (*Parbati v. Jagadis* (63)).

In the leading case of *Jogendra Bhupati v. Nityanand* (64) it was decided that where property was jointly inherited from their father by the son of a wedded wife and an illegitimate son, and was held jointly by them, the rule of survivorship applied, and upon the death of the legitimate son the property passed to the illegitimate son by right of survivorship (*Sadu v. Baiza* (65)). But this principle has not been extended by the Allahabad High Court so as to allow an illegitimate son to inherit collaterally to a legitimate son by the same father (*Shome Shankar v. Rajesar* (66)). The Madras High Court has similarly held that an illegitimate son is not entitled to a share in the property of his father's brother's sons (*Karuppa v. Kumarasami* (67)).

The acquirer of property presumably intends to retain dominion over it, and in the case of a widow the presumption is none the less so when the fund with which the property is acquired is one which, though derived from her husband's property, was at her absolute disposal. A widow's absolute power of disposition over the income derived from such limited estate being now fully recognised, it is only reasonable that, in the absence of an indication of her intention to the contrary, she must be presumed to retain the same control over the investment of such income. The mere fact that properties thus acquired by her are managed and enjoyed by her without any distinction, along with properties inherited from her husband, can in no way affect this presumption. She is the sole and separate owner of the two sets of properties so long as she enjoys the same, and is absolutely entitled to the income derived from both sets of properties. She cannot but manage and enjoy both sets of properties alike. Her case is not analogous to that of an undivided member of a joint family possessing joint family property, who, by throwing into the common stock

(60) 4 Bom. L. R., 376 (61) 4 Bom. L. R., 527. (62) 24 All., 472 (63) 4 Bom. L. R., 376.

(64) 18 Cal., 151 (65) 4 Bom., 37 (66) 31 All., 99. (67) 25 Mad., 429.

the income which he derives from his separate or self-acquired property, manifests his intention to impress such self-acquired property with the character of joint family property (*Akkanna v. Venkayya* (68). See 14 Cal., 861; 10 Bom., 478).

In order to sustain an alienation of property by a widow having a widow's estate, it must be shown that there was either a legal necessity for the alienation, or at least the grantor was led, on reasonable grounds, to believe that there was. If a mortgagee advances money to such widow after making proper enquiry that the money is required for legal necessity, it is not incumbent on him to see that the money he advances is applied to meet such legal necessity, nor is he bound to ascertain that every pice of the money so advanced is actually required for a legal necessity (*Ghansham v. Badaya* (69)).

Where a testator left a will providing that if no son be born to him his wife should be the owner, it was held that she acquired under the will an absolute estate in the property and was entitled to dispose of it by will (*Jairam v. Kessowjee* (70)). As no reference has been made in this case to the Indian Succession Act, it may be observed that when a gift is made by a will, the legatee is entitled, under the provisions of section 82 of the Act, to the whole interest of the testator, unless it appears from the will that only a restricted interest was intended to be given (*Saroda Sundari v. Kristo Jiban* (71)).

A contract made with the widow of a last male holder by the then expectant heirs with a *spes successionis* that she is to be the absolute owner during her life-time is not binding on the reversigner who becomes entitled to succeed when the succession opens out at her death (*Bahadur Singh v. Mohar* (72)).

According to the Mitakshara the share which the mother in a joint family obtains on partition, after the death of the father, of the joint family property between the mother and the sons, becomes the mother's *stridhan*, which devolves on her death upon her own heirs and not upon the heirs of her husband (*Ohridu v. Naubat* (73)). Being her *stridhan* the mother is capable of alienating such share at her pleasure (*Sri Pal Rai v. Surajbali* (74)). Under the same law, a daughter succeeding to the self-acquired property of her father takes a limited and restricted estate only, and such property does not become her *stridhan* (*Venkayyamma Garu v. Venkataramanayyamma* (75)). In the Bombay

(68) 25 Mad., 351. (69) 24 All., 547. (70) 4 Bom. L. R., 555. (71) 5 Cal. W. N., 500.

(72) 4 Bom. L. R., 233. (73) 24 All., 67. (74) 24 All., 53.

(75) 4 Bom. L. R., 657; 25 Mad., 678.

Presidency, save in the case of a widow succeeding to her husband, it has been consistently held that property which a woman takes by inheritance is her *stridhan*, and passes to her heirs on her death.

LAW.

FEUDAL TENURES IN WESTERN INDIA.

I. *The Jareja land-tenure of Kutch.*

BY J. A. SALDANHA, B. A. LL. B.

WE have already given a general idea of the feudal tenures of Western India. We shall now take each of these tenures one by one and describe them in detail, beginning with the Jareja Land Tenure of Kutch.

Kutch (Sanskrit *Kachohh*, which means marshes and lowlands) is a province of Western India, lying between the peninsula of Kathiawar on the south and the province of Sind on the north, and extending from $20^{\circ} 47'$ to 24° North Latitude and 68°

Description of Kutch. 26' to $71^{\circ} 10'$ East Longitude. On the north and west it consists of a large tract of marshy land called the Runn, submerged under water during the monsoon and dry during the hot weather. Exclusive of this portion, the province of Kutch consists of a belt of land 160 miles from east to west and 35 to 70 miles from north to south, almost entirely cut off from the mainland and having a population of about 600,000 souls, which may be divided into the following classes:—

HINDUS.	Jareja Rajputs	about 9,000
	Waghella Rajputs	1,000
	Other Rajputs of various tribes	60,000
	Brahmins and Banias, Cultivators, &c.	400,000
		440,000
MAHOMEDANS-Memons, Boras, &c.		110,000
CHRISTIANS, PARSIS, JAINS, &c.		50,000
		600,000

Kutch is a province under a native ruler called the Rao. The Adhai subdivision, however, consisting of seven villages scattered over the centre of the territory, is held by an independent ruler of the same tribe, known as the Thakor of Morvi in Kathiawar. The province under the Rao consists of

1035 villages, of which 432 consists of the *domeens* or *khaleas* land of the Rao, 203 are held on religious or service tenure, and 400 belong to the smaller Rajput Chiefs, who enjoy within their estates independent revenue administrations and jurisdiction of various extent. It is of the tenure of the land held by these Chiefs, also called Bhayads or Jarejas, that I am going to treat in this article. This tenure of land is particularly interesting, as it in many points resembles that of the feudal tenure of Europe in the Middle Ages.

It will be useful to introduce the subject with a brief history of Kutch.

History of Kutch and the Jarejas.

Originally a marshy land and inhabited only by wild beasts, it was cleared for cultivation and gradually inhabited by people that mostly crossed over from the province of Sind, borne down by pressure of peoples coming from the north, until we find that in the ninth century the dominant races in Kutch were the Chowras, located in the western portion, the Kattees in the centre and south, and the Waghellas in the eastern part or Wagad, while the Lower Sind was held by the Summas, a tribe of Rajputs. About this time the Arabs conquered Sind and Kutch, and large numbers of the various clans of the people embraced Islamism. From the 11th to the 13th century the Mahomedans of the Sumra dynasty held sway in Sind, and during this time large bands of the Summa Rajputs appear to have crossed over to Kutch and settled there. On the overthrow of the Sumra dynasty by Alaaddin in 1315, the Summas again became rulers of the south of Sind. About the middle of the 15th century a large band of the Summas is said to have emigrated to Kutch under the leadership of Jam Lakha, son of Jara, hence the name Jareja given to the tribe. The Jarejas conquered the whole of Kutch and have since been the rulers of the province. The more important of the followers of the Chief, or Rao, and the cadets of the royal family (called Bhayads or brothers) were granted villages, and old Waghella and other Rajput Chieftains were probably confirmed in their holdings on their recognizing the supremacy of the Rao and giving up some of their property and possessions—a transaction called *commendation*. Each of the Jareja and other Rajput Chiefs enjoyed unlimited authority within his own lands, the Rao's ordinary jurisdiction being confined to his own *domeens*. The Rao could call on them for military service in war and was entitled to fealty and certain payments at the time of the Chief's installation and on other occasions, which resemble the dues under the feudal tenure. The principal Jareja Chiefs formed a Council which was consulted in all matters concerning their common welfare.* Thus there has been in Kutch a concurrent double

*This Council was somewhat similar to the *Magnam Concilium* or Great Council under the Norman kings of England, of the barons and ecclesiastics who held immediately from the Crown.

authority, double jurisdiction and powers, which led to constant friction between the Darbar and the Chiefs, and hence the history of the rule of the Jarejas in Kutch is marked throughout by treachery, turmoil, intestine commotion, carnage and bloodshed, for which we can hardly find a parallel in the history of any other nation of the world. At the commencement of this century anarchy reigned supreme in the province. The Rao given up to the lowest debauchery and crime, and his despotism threatening to crush the Jareja Chieftains, the Waghella Chiefs in open revolt, the State torn by rival factions, the country overrun by freebooters, the coasts devastated by pirates—all was in chaos and disorder that threatened the peace of the neighbouring States. The British were at this time called on by the Rajput Chiefs to intervene, and their various attempts to bring about peace having failed, the reigning Rao was deposed in 1819 and his son was placed on the throne under a Regency consisting of three Jareja Chiefs. A treaty was then concluded with the Darbar, duly assented to by the Bhayad.

The Treaty of
1819 A. D.

This treaty forms the basis of the constitution of Kutch, of the relationship between the Rao and the Chiefs, and of the external relations of the Darbar, which were in future to be under the control of the British. "In the domestic concerns of the Rao or of those of any of the Jareja Chieftains of the country" the treaty secures absolute independence, subject to the right of the British Government to interfere for the correction of abuses which may operate oppressively on the inhabitants. Under the 16th article "the British Government with the approbation of Kutch engages to guarantee by separate deeds the Jareja Chiefs of the Bhayad and generally all Rajput Chiefs in Kutch and Waghad, in full enjoyment of their possessions according to ancient custom."* But at the same time it was stipulated that "previously to the execution of the deed of guarantee in favour of the Jareja Bhayad, a written engagement shall be entered into by them to abstain from the practice of Infanticide," which was rife in the province. The Rao also undertook by the treaty in his behalf and that of his heirs, "to afford what military force they might possess to the aid of the Honourable Company's Government. This article, however, is not to be understood as imposing any duties on the Jareja Bhayad contrary to the established customs." The deeds of guarantee, given to the Chiefs in pursuance of the 16th article, pledge the British Government that the Chiefs shall continue in "the full enjoyment of their possessions and rights." The Gujarati version adds the words: "These shall be continued to you from generation to generation according to established customs." In an agreement signed in 1834 the Rao further declared that he was to rule

* The words "according to custom" are found only in the Gujarati version.

under the constitutional and established advice of his ministers and the Jareja Bhayads.

The British
Guarantee of
1819 A. D.

The treaties of 1819 and 1834 are the Magna Charta of the Jareja and other Rajput Chiefs of Kutch. But the nature and extent of the British Guarantee of 1819 gave rise to a good deal of heated controversy and dispute. What was the extent of the proprietary and revenue rights of the Chiefs over their Estates, how was their succession to be regulated, what powers of alienation of lands did the Chiefs possess, what were the services and payments to be made by the Chiefs for the holding of the villages, what the extent of their civil and criminal jurisdiction, what voice had the Chiefs in settling questions for their common welfare, &c., were questions, which were settled only after over fifty years of the most patient inquiry and correspondence. The results of the inquiries of Government and its decisions have been embodied in what is called the Kutch Bhayad Settlement of 1875, and other orders. We shall now make a few observations on each of the questions raised.

(a) As to *proprietary and revenue rights*, the Bhayad enjoys absolute property in the villages, and all mineral and forest rights belong to him and not to the Darbar. The Bhayad is also entitled to every revenue right in his villages.

(b) There has been much controversy about the question as to what extent the Bhayad enjoys the *right of alienating* his land. In theory the right of reversion to the Bhayad villages vests in the Darbar, and therefore none of the village-land can be permanently alienated or encumbered; for were this suffered the Darbar's reversionary rights would be impaired. The same principle obtained also under the feudal system of Europe. But in practice it is found that permanent transfers of land to people outside the Bhayad's family have been largely effected, and this practice it is hardly possible not to recognise as a legal one at the present time, after it has become so long crystallized into a customary right. It may be noted here that in Kathiawar such alienations are not recognised as valid, and that even in Kutch it is believed that the Jarejas as a rule prefer a temporary to a permanent alienation.

(c) *Succession* to Bhayad property is not regulated by primogeniture, but the property is subdivided among the members of the Bhayad in certain proportions. But the Chieftancy or *Tilak* goes as a rule to the eldest member in direct male descent, and where the direct line is extinct, to the nearest collateral heir. But it has been held that the Chieftancy need not necessarily always descend by primogeniture.

(d) The Chiefs are bound to protect their own villages and to deny shelter to dacoits and other bad characters, and to pursue them when passing through their limits.

(e) The Chiefs do not pay any periodical *tribute or taxes* to the Darbar, except the Waghella Chieftains, who have to pay a small amount periodically. This exemption of the Chiefs, who occupy nearly half the province of Kutch, throws a heavy and disproportionate burden of expenditure on the Darbar for the benefit of his own demesne land as well as the estates of the Jarejas, and is hardly justifiable on political grounds.

(f) The right to *military service* is not mentioned in the Guarantee deeds, but this right, though not expressly stipulated, is inherent in the very nature of the tenure. The Jareja holdings in Kutch, it is true, mostly derive their origin from the principle which obtains in all Rajput States that the Chief must provide for his younger sons or brothers according to his means, and military service is not the basis of the tenure on which the land is held. But service in times of general danger has always been considered as one of the incidents of the tenure, subject to the condition that, wherever the Bhayads have assembled with their forces, they are entitled to receive from the Darbar an allowance for their horses and food and opium for themselves. The right of military service, however, on account of the internal and external peace that reigns in the province under the *Pax Britannica*, is in abeyance and dormant, though it is not extinct.

(g) A Bhayad is, as a feudal vassal under the European feudal system, subject to *Gadi Nasarana*, that is, he is liable to pay a levy when a new Rao mounts the *gadi* or throne. *Nasarana* has to be paid also to the Darbar on the occasion of the Rao's marriage and on the birth of a prince. But the Bhayad is not liable to any other feudal dues.

(h) The Chiefs are also bound to attend the Rao's *Darbar*, as a sign of their fealty, and have also probably to accompany him when summoned to any Imperial, Provincial or Local Darbar; but on such occasions the Bhayads are entitled to receive rations for themselves, their men and their horses.

(i) The question of the *Civil and Criminal administration* of the Jareja Estates and the power of the Darbar to impose *Mohals** within them, has been the source of the greatest dissensions between the Rao and the Chiefs. While the Jarejas have been always struggling to prevent all interference on the part of the Darbar in the judicial administration of their estates, the Darbar has been always trying to encroach on the jurisdiction of the Guarantee holders and to reduce it to a nothing. Moreover, on account

* *Mohal* is a system of billeting officials on the vassals or ryots in order to compel obedience to orders.

of the minute subdivision of villages among the members of the Jareja families, the exercise of independent jurisdiction by the Bhayad petty proprietors rendered the efficient administration of justice an impossibility. The Kutch Bhayad Settlement of 1875, which laid down the judicial administration of the province and has greatly remedied the old evils, requires that the Darbar, with the sanction of Government, should keep a list of the Guarantee holders, who should be divided into five classes as shown in the following statement:—

Class.	Number of villages held.	Criminal jurisdiction up to cases involving.	Civil jurisdiction.
1st	More than 15.	7 years' imprisonment or fine of 6,000 koris. †	Unlimited
2nd	More than 5.	5 years' imprisonment or fine of 2,000 koris.	Jurisdiction up to 10,000 koris.
3rd	More than 1.	3 months' imprisonment and a fine of 300 koris.	Up to 2,000 koris.
4th	1 village.	25 days' imprisonment and a fine of 80 koris.	Up to 200 koris.
5th	Less than 1 village.	NIL.	NIL.

Under the Settlement the following cases are to be decided by a Judicial Council called the Jareja Court, consisting of five members, four of whom are to be selected by the Rao from among the Guarantee holders, and the fifth member to be His Highness's Diwan or Najib Diwan:—

- (1) Cases of every kind in which a Guarantee holder is concerned or in which one or both of the parties live on a Guarantee holder's estate.
- (2) Civil and criminal cases arising on the estates of Guarantee holders *and beyond their powers*.

Sentences of death, transportation for life or fourteen years' imprisonment, are subject to confirmation by the Rao. Appeals are allowed in certain cases to the Darbar and to the Bombay Government. As to *Mohals*, the Court has power to impose them on any person in the matter of disobedience to its orders, and the Rao's right to *Mohals* is restricted to his right as Suzerain, and in cases of Guarantee holders they can be imposed only in execution of any legitimate order of His Highness as such.

† 100 Koris are nearly equivalent to 86 British Indian rupees.

(j). Another important question that Government has had to settle is as to the persons *who are entitled to the Guarantee of 1819*. Lists of those who were thought to be Guarantee holders were published in 1848, 1869 and 1872; but they satisfied neither party. The question was then thoroughly sifted by the Bombay Government, and after a careful enquiry it was resolved in 1878 to issue a new list on the principle that the list should include all persons who held the position of *Chief* at the date of the Treaty of 1819, no matter whether they received the Guarantee deeds or not *and their descendants*, who have succeeded them in the Chieftancy. The list issued on this principle included 139 persons, and three more have been added to it since 1878.

[*To be continued*].

INSOLVENT DEBTORS IN MOFFUSSIL.

BY CHUNILAL MANEKAL GANDHI, B. A., LL. B.

VAKIL, HIGH COURT.

THE question as to how an insolvent judgment debtor, applying under the chapter relating to "Insolvent judgment debtors" in the Civil Procedure Code, in the Moffussil, can be protected from personal arrest and imprisonment during the continuance of the insolvency proceeding in the Court of the First Instance, and while an appeal is pending on orders passed in such a proceeding is not quite free from doubt and is beset with difficulties. It will be apparent, even to a superficial reader, that the Chapter of "Insolvent Judgment debtors" in the Civil Procedure Code, as it stands is defective and is in need of great many alterations and additions to make it workable and complete.

In the first instance s. 344, Civil Procedure Code says:—"Any judgment debtor arrested or imprisoned in execution of a decree for money, or against whose property an order for attachment has been made in execution of such a decree may apply in writing to be declared an insolvent." Under s. 336, Civil Procedure Code, if a judgment debtor so arrested or imprisoned in execution of a decree express his intention to apply under Chapter XX (of Insolvent judgment debtors) and if he furnish sufficient security that he will appear when called upon and that he will, within one month, apply under s. 344 to be declared an insolvent, the Court shall release him from arrest, and when he does so apply the surety is discharged.

Has the presentation of such an application to be declared an insolvent by itself, the power to stay for the time being issue of all processes for arrest of person or attachment of property of such an applicant? Common sense

suggests that it should be so. The applicant by his very petition for insolvency undertakes to put all his property at the disposal of the Court, and the very object of all insolvency legislation is to afford protection from personal arrest to an honest judgment-debtor who is unable to meet all his liabilities in full but who is, at the same time, willing to place all his property at the disposal of the Court for the benefit of all his creditors; and still, curious it may seem, there appears no provision in the Civil Procedure Code, which expressly enabled moffussil Courts, hearing such applications, to issue an order protecting an insolvent judgment-debtor from personal arrest, till the final disposal of the application for insolvency. It may be argued that a discharge under section 336, Civil Procedure Code on condition that the arrested judgment debtor will apply under s. 344 to be declared an insolvent *ipso facto* indicates that the intention of the legislature was to keep such a person at large till the disposal of his application. But if that be the intention of the legislature why not clearly express it in so many words so as to leave no doubt in the mind of the Court about it. At any rate, that reasoning will not apply when the judgment debtor applies to be declared an insolvent on an order being made for the attachment of his property; nor will it apply, in other cases of execution of other decrees passed against him, in favour of other creditors, and yet the fact remains that an insolvent judgment debtor stands in need of protection from personal arrest in execution of the decree already set in motion against him as well as other decrees waiting to be executed against him.

These considerations naturally raise the question how is it that the Civil Procedure Code omits to give expressly such an essential power both to Courts of first instance as well as to Courts hearing appeals from orders in insolvency proceedings—as the giving of protection from personal arrest to insolvent judgment debtors during the continuance of the original proceeding and appeal. No doubt a Court executing a decree may, in the first instance, decline to issue a warrant of arrest, and may issue a notice under s. 245 B calling upon the debtor to show cause why he should not be arrested in execution of a decree against him and may eventually make an order disallowing the application for his arrest and imprisonment, if some of the conditions of s. 337 A are satisfied. But such a procedure is, it is feared, in individual cases bound to be fitful and ruinously expensive; nay, almost prohibitive to an insolvent debtor, who may have several decrees passed against him in several Courts, and the orders in all such Courts may not be the same; in order that protection from personal arrest may be afforded to insolvent judgment debtors in as cheap and expeditious a method as possible large powers should be conferred on Courts hearing insolvency proceedings,

and they should be enabled to grant protection to insolvent debtors from personal arrest till the hearing of the application, and till such time after as the said Courts may deem proper to enable the insolvent judgment debtor to appeal; and although in *Nixon v. Chartered Mercantile Bank* (I. L. R. 8 Mad. 97 at p. 98) Kernan J. did direct that the order to arrest should not issue for one month to enable the insolvent to appeal if so advised, such a power is nowhere expressly given by the Civil Procedure Code; and such an omission is likely to raise doubts in the mind of any conscientious Judge. If, therefore, he were to go on issuing processes for arrest of the insolvent judgment debtor in the execution of the decrees of his several creditors the consequence that will follow will be regarded as hardly edifying to Courts of justice. Every time the insolvent judgment debtor is arrested and brought before the Court, he will, of course as a matter of right, be discharged on his furnishing security to appear when called upon, and on his undertaking to apply for insolvency within a month. The same result will practically ensue, but at what cost of money and what amount of worry it is not difficult to conceive. It will be nothing short of a persecution for poverty. It is highly necessary, therefore, that such a power should be expressly given. If the power did not exist and if an insolvent debtor were sent to jail the moment his application for insolvency were rejected, the right of appeal given to him would be a mere mockery. Probably by the time his appeal is heard and disposed of, he would be in jail for a great portion, if not the full period, of six months for which he could be kept in jail for unsatisfied debts. The right of appeal given to him would be nugatory, and even if his appeal were eventually to succeed he would not derive the benefit he expected to reap by appealing. He may probably not be in a position even to appeal when once he is imprisoned in the jail. For ordinarily, it may be presumed that the resources of an insolvent debtor must be very limited, and therefore, if a power to exempt the insolvent judgment debtor from personal arrest were not expressly given both to the Court of the first instance and to the Court of appeal from its orders, till the matter is finally disposed of by the latter, it would be virtually tantamount to punishing the poor for his poverty, and denying justice to the poor in spite of the great constitutional maxim of the law that justice shall not be denied to the poor. May we not then legitimately appeal to the legislature to cure the existing defects in the Code of Civil Procedure whilst the new Code is yet on the legislative anvil.

RECENT ENGLISH CASES.

COMPANY—*Articles of association—Alteration of articles—Special resolution—Contract—Retrospective effect of altered articles—Issue of shares—Bona fides—Voting power—Injunction—Companies Act, 1862 (25 & 26 Vict. c. 89), s. 50.* A company cannot contract itself out of its statutory right to alter its articles, even by an agreement independent of and outside the articles of association. The principle of *Allen v. Gold Reefs of West Africa*, [1900] 1 Ch. 656, applies to a case between the company and an outsider on a separate contract as well as to a case between a company and a shareholder on the contract contained in the articles.

Where shares had been issued by the directors, not for the general benefit of the company, but for the purpose of controlling the holders of the greater number of shares by obtaining a majority of voting power:—*Held*, applying the principle of *Fraser v. Whalley*, (1864) 2 H. & M. 10, that they ought to be restrained from holding the meeting at which the votes of the new shareholders were to have been used. *Punt v. Symons & Co.* (1903, 2 Ch. 506).

CONTRACT—*Performances—Prevention by accident—Misfortune beyond control of either party—Cheque given in part payment before performance rendered impossible—Payment of cheque subsequently stopped—Right to recover on cheque.* The plaintiff, a refreshment contractor, agreed with the defendants, who were acting on behalf of the "Navy League," to supply at an agreed rate the refreshments on a steamer hired by the defendants for the purpose of taking members of the Navy League to the naval review on the occasion of the King's coronation. By the contract 300*l.* was to be paid by the defendants to the plaintiff on the Monday previous to the review day, and it was a term of the contract that, in the event of the cancellation of the review before any expense had been incurred by the contractor, there should be no liability on the part of the defendants. The plaintiff expended a small sum on extra knives, forks, &c., but nothing on refreshments. A cheque for 300*l.* was sent by the defendants to the plaintiff on the stipulated day, but was not paid by the plaintiff into his bank. On the next day, owing to the illness of the King, the review was cancelled. An endeavour was subsequently made to effect an arrangement between the parties, but ultimately the defendants stopped payment of the cheque before it was presented:—*Held*, in an action on the cheque, that upon the cheque being stopped the rights of the parties were the same as though it had never been given, and that the plaintiff was not entitled to recover. *Elliott v. Crutchley* (1903, 2 K. B. 476).

COVENANT—Building restrictions—One house—Double-tenement house. A building structurally divided into two tenements on different floors, with no internal communication, common staircase, or common front door, constitutes two houses within the meaning of a covenant not to erect more than one house on the site. *Iford Park Estates, Limited v. Jacobs* (1903, 2 Ch. 522).

VENDOR AND PURCHASER—Lease, purchase of—Unusual and onerous covenants—Duty of vendor—Constructive notice—Conveyancing Act, 1882 (45 & 46 Vict. c. 39), s. 3, sub-s. 1. On a sale of a lease containing unusual and onerous covenants it is the duty of the vendor, before the contract is made, to disclose the existence of the covenants to a purchaser ignorant of them. If he does not give the purchaser express notice of the covenants, he must, in order to affect the purchaser with notice of them, shew that he gave him such an opportunity of acquainting himself with the terms of the lease under such circumstances that he ought reasonably to have done so. *Molynous v. Hartrey* (1903, 2 K. B. 487).

REVIEW.

The Bengal Municipal Act (Bengal Act II of 1884). By BHAIKAB CHANDRA DUTT, B. L., Pleader Judge's Court and Pleader to the Howrah Municipality. Second Edition. CALCUTTA: The Calcutta Weekly Notes Office, 3 Hastings Street. 1903. Demi 8 vo. Pages xi, 288, 232 and 29. Price Rs. 3.

THE Bengal Municipal Act as amended by Acts III of 1876, IV and VI of 1894 and II of 1896 of the Bengal Council is annotated here with decided cases, cognate provisions of other enactments and proceedings in the legislative council. Wherever any section of the Act is amended by a subsequent enactment, the amendment is briefly denoted under the suggestive heading of "changes". This is followed by a consideration of the "object" or "result" of the change. The *rationes* of decided cases are then set out very briefly and they are arranged in suitable sub-divisions, each of which is headed by a proper caption. The voluminous appendix contains all the resolutions and other literature pertinent to the subject. We regard this publication as a well-printed, well arranged and a handy book of reference upon the Municipal Law of Bengal.

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CONFESSIONS IN CRIMINAL LAW.

A CONFESSION made by an accused person is irrelevant in a Criminal proceeding if the making of the confession appears to the Court to have been caused by any inducement, threat or promise having reference to the charge against the accused person proceeding from a person in authority and sufficient in the opinion of the Court to give the accused person ground which would appear to him reasonable for supposing that by making it he would gain any advantage or avoid any evil of a temporal nature in reference to the proceedings against him (Indian Evidence Act, s. 24). A confession in order to be admissible must be free and voluntary, that is, must not be extracted by any sort of threat or violence nor obtained by any direct or implied promises however slight or by the exertion of any improper influence: *Reg. v. Funnell* (1). The confessions of prisoners are received in evidence upon the same principle upon which admissions in civil suits are received, viz., the presumption that a person will not make an untrue statement against his own interest. Also if a man swearing for his interest can give no credit, he must certainly give most credit when he swears against it. On the other hand, in the case of *R. v. Thompson* (2), Cave J. said, "For my part I always suspect these confessions which are supposed to be the off-spring of penitence and remorse and which nevertheless are repudiated by the prisoner at the trial. It is remarkable that it is of very rare occurrence for evidence of a confession to be given when the proof of the prisoner's guilt is otherwise clear and satisfactory; but when it is not clear and satisfactory the prisoner is not infrequently alleged to have been seized with the desire born of penitence and remorse to supplement it with a confession; a desire which vanishes as soon as he appears in a Court of Justice."

(1) 7 Q. B. D. 150.

(2) 2 Q. B. D. 12.

Confessions may be divided into two classes: (a) Confessions made in open Court, (b) Confessions out of Court. In the first class of cases when the accused in open Court confesses that he is guilty of the offence with which he is charged the Court may consider it as the most satisfactory evidence of the guilt of the accused. Such a confession is in other words a plea of guilty and a prisoner may be convicted on his own uncorroborated confession: *Queen v. Rangesal Sontal* (3). And in *Queen v. Thurree* (4) it has been held that a voluntary and genuine confession is legal and sufficient proof of guilt. Though instances have occasionally occurred in which innocent persons have confessed themselves guilty of the gravest crimes still generally speaking it cannot be conceived that a man would be induced to make a free and voluntary confession of his guilt so contrary to the feelings and principles of human nature if the facts confessed were not true.

Confessions under the second class are admissible in evidence only under certain specified conditions, as mentioned in ss. 24 to 30 of the Indian Evidence Act. Now the first point to be considered is as to what would amount to an inducement, threat or promise such as to exclude the confession of an accused caused thereby and who is to be considered as a person in authority. It has been observed by Pollock C. B. in *R. v. Baldry* (5) a simple caution to the accused to tell the truth, if he says anything, has been decided not to be sufficient to prevent the statement being given in evidence. But where the admonition to speak the truth has been coupled with any expression importing that *it would be better* for him to do so it has been held that the confession was not receivable. But in the absence of evidence that the confession of an accused person has been induced by illegal pressure it is not to be presumed that such confession was so induced.

The first case of this kind in India seems to be the case of *Ry v. Naoroji Dadabhai* (6) "where W, a travelling auditor in the service of the G. I. P. Ry. Co., having discovered defalcations in the account of the prisoner who was a booking clerk of the company went to him and told him he had better pay the money than go to Jail" and added that "it would be better for him to tell the truth." After which the prisoner was brought before the Traffic Manager in whose presence he signed a receipt for and admitted having received a sum of Rs. 826. Held, that the words used by W. constituted an inducement to the prisoner to confess and that W. was a person in authority within the meaning of s. 24 of the Evidence Act and that the receipt signed by the prisoner was therefore not admissible in evidence on his trial. In *Queen v. Hicks* (7) the prisoner was tried for wounding with intent to murder

(3) 8 W. R. 73.

(4) 7. W. R. 41.

(5) Den. C. C. 430 and 1 Cox. Cr. 530

(6) 9. Bom. H. C. Rep. 358.

(7) 10. B. J. R. Ap. 1

and wounding with intent to do grievous bodily harm. The crime was committed on the high seas on a ship on which the prisoner was a seaman. The standing Counsel having proved that the master of the ship had sailed from Calcutta and could not be found tendered his deposition before the committing Magistrate. The deposition contained an admission alleged to have been made to the deponent by the prisoner when in custody. Phear J. refused to allow this as the admission was stated to have been made immediately after the prisoner with others had been threatened by the witness to whom the statement was made with a loaded rifle. It was immaterial that the threat was not for the purpose of extorting the confession but in order to suppress an attempt at mutiny. But this ruling scarcely seems justified by section 24, as it distinctly provides that the inducement threat or promise must have reference to the charge against the accused person.

In the case of *Emp. v. Mohanlal* (8) the matter before a Panchaet was whether M. and K. had murdered B. and thereby disqualified themselves from further intercourse with the rest of their brotherhood. M. and K. made certain statements before the Panchaet which it was afterwards sought to prove against them on their trial for the murder of B. as confessions corroborating the evidence of an approver. It appeared that it was not till the sixth meeting of the Panchaet, and when M. and K. were threatened with excommunication from caste for life that they made such statements. Held, that if the statements attributed to M. and K. had been actually made and assented to and this fact had been duly proved, the provisions of s. 24 of the Evidence Act could not be pleaded against their admissibility on the ground that such statements had been caused by such threat, for the members of the Panchaet were not in authority over M. and K. within the meaning of that section nor was there any threat made having reference to any charge against them. Also see *Emp. v. Fernand* (9). In *Queen-Emp. v. Uzoer* (10) a Deputy Magistrate before taking down a statement from a person brought before him by the police noted on the paper on which he was about to take down the statement, the following words which after excluding the police officers from his presence, he had verbally addressed to the accused "after excluding from my presence the police officers who brought him, I warned the accused that what he would say would go as evidence against him so he had better tell the truth." It was held that the use of such language was calculated to hold out an inducement to the prisoner to confess and that such a confession was therefore inadmissible in evidence against him.

A master or mistress, a Magistrate, Constable or other official in charge of the accused is generally considered to be a person in authority. In *Than-*

(8) I. L. R. 4 All. 46.

(9) 4 Bom. L. R., 785.

(10) I. L. R. 16 Cal. 775.

draya Mudaly v. King Emp. (11), two days after a decoity had been committed in a certain village, T went to the village Magistrate who was enquiring into the dacoity and requested him to report that T had not been concerned in the dacoity. The village magistrate replied that there was already a hue and cry against T but that if T spoke the truth he would consult the head constable and arrange that T should be taken as a witness. T at first denied all knowledge of the dacoity but ultimately made a confession. T was charged with others with having committed the dacoity and this confession was deposed to by the village Magistrate. The Sessions Judge in his charge to the Jury made no reference to the relevancy or otherwise of the confession under s. 24 of the Evidence Act and he said that if the confession was true it was enough to warrant the conviction of the accused. The jury returned a verdict of guilty and the accused was sentenced. Held, on appeal that the village Magistrate was a person in authority within the meaning of s. 24 of the Evidence Act and that as the arrangement promised by him before the confession was made was obviously intended to be one that would save the accused from prosecution if he would confess, the confession was irrelevant under that section; also that the misdirection was a material and important one likely to lead an erroneous verdict and that a new trial must take place. As has been said above in the case of *Emp. v. Mohanlal* (12) the inducement threat or promise must have reference to the charge against the accused person in order to render a confession caused thereby inadmissible in evidence, so that a confession prompted by a promise of matters having nothing to do with the charge, such as that the prisoner should have some beer or that he should see his wife, would not be excluded. One more point is that the inducement, threat or promise must be of a temporal nature and therefore a confession obtained by spiritual exhortations is admissible: *B. v. Sleeman* (13), *R. v. Gilham* (14). If such a confession as is referred to in section 24 is made after the impression caused by any such inducement, threat or promise has in the opinion of the Court been fully removed it is relevant (s. 28, Evidence Act); therefore if the impression that a confession is likely to benefit him has been removed from the mind of a prisoner what he says will be evidence against him although he has been advised to confess. Thus where it appeared that a constable told a prisoner he might do himself some good by confessing and the prisoner afterwards asked the Magistrate if it would be any benefit to him to confess on which the Magistrate said he would not say it would, the prisoner having afterwards on his way to prison made a confession to another constable and again in prison to another Magistrate, the Judges

(11) I. L. R. 26 Mad. 58. (12) I. L. R. 4 All. 46. (13) I. Deans C. C. 249. (14) I. Moo. C. C. 184.

unanimously held that the confessions were admissible in evidence on the ground that the Magistrate's answer was sufficient to efface any expectation which the constable might have raised: *R. v. Rosier* (15). It is said by Mr. Justice Butler that there must be very strong evidence of an explicit warning not to rely on any expected favor and that it ought most clearly to appear that the prisoner thoroughly understood such warning before his subsequent confession can be given in evidence. So where a committing Magistrate told the prisoner that if he would make a confession he would do all he could for him and no confession was then made but after his committal the prisoner made a statement to the turnkey who held out no inducement and gave no caution. Parke J. said he thought the evidence ought not to be received after what the committing Magistrate had said to the prisoner more especially as the turnkey had not given any caution.

We now come to the most important point in the law of Confessions, viz., confessions made by an accused person to a police officer or made whilst in the custody of a police officer.

No confession made to a police officer shall be proved as against a person accused of any offence (s. 15 Evidence Act) and no confession made by any person whilst he is in the custody of a police officer unless it be made in the immediate presence of a Magistrate shall be proved as against such person (s. 26). Provided that when any fact is deposed to as discovered in consequence of information received from a person accused of any offence in the custody of a police officer so much if such information whether it amounts to a confession or not as relates distinctly to the fact thereby discovered may be proved (s. 27).

Similar to these are the provisions of ss. 162 and 163 of the Criminal Procedure Code, which are as follows; no statement made by any person to police officer in the course of an investigation under this chapter shall if taken down in writing be signed by the person making it nor shall such writing be used as evidence. Sec. 162 para 1: No police officer or person in authority shall offer or make or cause to be offered or made any such inducement threat or promise as is mentioned in Indian Evidence Act, s. 24. But no police officer or other person shall prevent by any caution or otherwise any person from making in the course of any investigation under this chapter any statement which he may be disposed to make of his own free will: s. 163.

Under s. 25 of the Evidence Act a confession made to a police officer is inadmissible in evidence except so far as is provided by section 27. It is immaterial whether such police officer be the officer investigating the case; the

fact that such person is a police officer invalidates the confession: *In re Hiran Miya alias Abdulwahid* (16).

The words police officer and Magistrate in s. 26 of the Evidence Act include the police officer and Magistrates of native states as well as those of British India: *Queen Emp. v. Nagalakala* (17).

In *Queen v. Musmat Lachoo* (18) the accused confessed to a police constable on being assured by him that nothing would happen to her, that she had killed her new born child and had buried it in the enclosure of her house. This statement led to the discovery of some bones of the head of an infant, a stone stained with blood and a knife, with which stone and knife she said she had killed her child. Before the committing Magistrate she made the same statement. In her trial before the Sessions Judge she admitted the birth of the child, she stated that it did not cry and that she buried it not knowing whether it was alive or dead. She also stated that the police constable had pressed and threatened her, and told her that if she confessed the truth nothing would happen to her. She denied having killed the child with the stone and sickle and said that she had merely pressed it on the ground and then buried it. There was no evidence to show that the child was born alive. It was held that the confession before the Magistrate was irrelevant and that the Court was not prepared to say that the confession made before the Sessions Judge was made after the impression, caused by the promise of the police constable had been fully removed and that looking to the fact that a promise of safety had been made, that the confession was even if accepted of a limited character and that as there was nothing to show that the child was born alive the accused must be acquitted of murder.

In *Reg. v. Harribolchandrar Ghose* (19) the prisoner on his arrest made a statement in the nature of a confession which was reduced into writing by one of the inspectors, and subsequently signed and acknowledged by the prisoner in the presence of the Deputy Commissioner of Police at the police office, the Deputy Commissioner receiving and attesting the statement in his capacity of Magistrate, it was held that the confession was not admissible in evidence under s. 25. In construing s. 25 the term "police officer" it not to be read in a technical sense but in its more comprehensive and popular meaning. This case was followed in *Emp. v. Rama Birapa* (20), *Queen Emp. v. Saleemudin* (21) and *Queen Emp. v. Bhima* (22).

A statement made to a police officer by an accused person while in the custody of the police, although intended to be made in self-exculpation and

(16) 1 C. L. R. 21. (17) L. L. R. 22 Bom. 235. (18) 5 N. W. P. 86, (19) L. L. R. 1 Cal. 207.

(20) I. J. R. 3 Bom. 12. (21) L. L. R. 26 Cal. 569. (22) I. L. R. 17, Bom. 485.

not as a confession may be nevertheless an admission of a criminating circumstance and if so under ss. 25 and 26 of the Evidence Act it cannot be proved against the accused: *Emp. v. Pandarinath* (23). *Reg. v. Amrita Govinda* (24), *Queen Emp. v. Jagrup* (25), and *Queen Emp. v. Matheros* (26).

Where a man accused of the murder of a girl gave to a police officer a knife saying it was the weapon with which he had committed the murder and said that he had thrown down the girl's anklets at the scene of the murder and would point them out and on the following day he accompanied the police officer to the place where the girl's body had been found and pointed out the anklets it was held that such statements being confessions made to a police officer whereby no fact was discovered could not be proved against him as it was by his own act and not from any information given by him that the discovery took place: *Emp. v. Pancham* (27), followed in *Emp. v. Babulal* (28) and *Queen Emp. v. Kamalia* (29). But this ruling was dissented from in *Legal Remembrance v. Ohima Nashi* (30) where following *Queen Emp. v. Nana* (31) it was decided that if the statement of an accused person in the custody of the police is a necessary preliminary of the fact thereby discovered it is admissible under s. 27 of the Evidence Act. It is immaterial whether the statement is sufficient to enable the police to make the discovery by themselves or is only of such a nature as to require further assistance of the accused to enable them to discover the fact.

It has been held by the full bench of the Allahabad High Court in *Emp. v. Baboola* (32) that s. 27 of the Evidence Act is a proviso not only to s. 26 but also to s. 25 and that therefore so much of the information given by the accused to the police officer, whether amounting to a confession or not, as related distinctly to the facts thereby discovered might be proved.

Where a statement is being detailed by a police officer as having been made by an accused in consequence of which he discovered certain facts, the strictest precision should be enjoined on the witness so that there may be no room for mistake or misunderstanding.

No judicial officer dealing with the provisions of s. 27 of Evidence Act should allow one word more to be deposed to by a police officer detailing a statement made to him by an accused in consequence of which he discovered a fact than is absolutely necessary to show how the fact that was discovered is connected with the accused so as in itself to be a relevant fact against him. Sec. 27 was not intended to let in a confession generally but only such

(23) I. L. R. 6 Bom. 34.

(24) 10. Bom. H. C. 497.

(25) I. L. R. 7. All. 646.

(26) I. L. R. 10. Cal. 1022.

(27) I. L. R. 4. All. 198

(28) I. L. R. 6. All. 599.

(29) I. L. R. 10 Bom. 595.

(30) I. L. R. 25. Cal. 413,

(31) I. L. R. 14. Bom. 260.

(32) I. L. R. 6. All. 509.

particular part of it as set the person to whom it was made in motion and led to his ascertaining the fact or facts of which he gives evidence : *Adu Shikdar v. Queen Emp.* (33).

The test of the admissibility under s. 27 of the Evidence Act of information received from an accused person in the custody of a Police officer whether amounting to a confession or not is "Was the fact discovered by reason of the information and how much of the information was the immediate cause of the fact discovered and as such a relevant fact?" *Queen Emp. v. Koomtraahab* (34).

Section 25 of the Evidence Act prevents a confession made to a police officer from being used as evidence as against an accused person but does not prevent its being used in favour of another accused person and so it has been held in *Emp. v. Pitambar Jina* (35) that this section does not preclude one accused person from proving a confession made to a police officer by another accused person tried jointly with him. Such a confession is not to be received or treated as evidence against the person making it but simply as evidence on behalf of the other.

If such a confession is otherwise relevant it does not become irrelevant merely because it was made under a promise of secrecy or in consequence of a deception practised on the accused person for the purpose of obtaining it or when he was drunk or because it was made in answer to question which he need not have answered whatever may have been the form of those questions or because he was not warned that he was not bound to make such confession and that evidence of it might be given against him : s. 29, Evidence Act.

When a confession has been obtained by artifice or deception but without the use of promises or threats it is admissible. Thus where a police officer deceived the prisoner into a belief that his brother-in-law had given out that he was guilty whereupon the accused made a confession before the Magistrate, it was held that the confession was good even if obtained by deception being admissible under s. 29 of the Evidence Act : *Queen v. Ramcharan Ghose* (35).

But where a pardon tendered to some of the accused by a Magistrate proved to be illegal, their confessions made under such tender, were held to be wholly inadmissible : *Emperor v. Hanmanta* (36).

Where a prisoner asked the turnkey if he would put a letter into the post and on receiving a promise that he would do so, gave him the letter which was detained and given in evidence as a confession at the trial. Garrow B. received the evidence : *R. v. Darrington* (37). So also where a person took

(33) I. L. R. 11 Cal. 635.

(34) I. L. R. 12 Mad. 153.

(35) I. L. R. 2 Bom. 61.

(36) 20. W. R. 33.

(37) I. L. R. 1 Bom. 610.

(37) 2. C. & P. 418.

an oath that he would not mention what the prisoner told him: *R. v. Shaw* (38).

When more persons than one are being tried jointly for the same offence and a confession made by one of such persons affecting himself and some other of such persons is proved the Court may take into consideration such confession as against such other person as well as against the person who makes such confession: s. 30 Evidence Act. When more persons than one are being tried for the same offence and a confession made by one affecting himself and some of the others is proved, s. 30 of the Evidence Act does not provide that such confession is evidence but that it may be taken into consideration, the intention of the legislature being that when as against any person implicated by such offence there is evidence tending to his conviction, the circumstances of such person being implicated by the confession of one of those who are being jointly tried with him shall be taken into consideration as bearing upon the truth or sufficiency of such evidence: *Queen v. Chandar Bhatta Charji* (39), *Queen v. Sadhu Mondal* (40), *Queen v. Jafarali* (41), *R. v. Hulaga* (42).

The confession of an accused person has been held to be evidence only against himself: *Queen v. Kalicharan Lohara* (43).

Further that it cannot be taken to be any corroborative evidence or any evidence at all against any body other than himself: *Queen v. Basrudin* (44), *Queen v. Darbaroodas* (45), *Emp. v. Bhawani* (46), *Emp. v. Ramchand* (47), *Queen Emp. v. Dosa Jiva* (48), *Queen Emp. v. Khandia Pandu* (49).

The above section ought to be construed with great strictness and therefore the confessions of persons tried jointly for the same offence may be considered as against other parties then on their trial with them but such confessions when used as evidence against others stand in need of corroboration and cannot be used as corroborating in any way the evidence of approvers against such others: *Queen v. Jafarali* (50), *Emp. v. Ashutosh Chukarbitty* (51).

The words "take into consideration" in s. 30 of the Evidence Act do not mean that the confession referred to in the section is to have the force of sworn evidence: *Queen Emp. v. Nirmal Das* (52).

Before the confession of a person jointly tried with the prisoner can be taken into consideration against such prisoner it must appear that that confession implicates the confessing person substantially to the same extent as it implicates the person against whom it is to be used in the commission

(38) A.C. & P. 373. (39) 24. W. R. 42. (40) 21. W. R. 69. (41) 19 W. R. 27
(42) I. L. R. 1. Mad. 163. (43) 8. W. R. 84. (44) 8. W. R. 35. (45) 13. W. R. 14.
(46) I. L. R. 1. All. 694. (47) I. L. R. 1. All. 675. (48) I. L. R. 70. Bom. 231.
(49) I. L. R. 15. Bom. 66. (50) 19. W. R. 57. (51) I. L. R. 4. Cal. 483. (52) I. L. R. 22. All. 446.

of the offence for which the prisoners are being jointly tried: *Queen v. Belatali* (53), *Queen v. Banwarilal* (54), *Queen v. Baijoo Chaothari* (55), *Emp. v. Gunraj* (56), *Emp. v. Mula* (57), *Emp. v. Daji Narau* (58), *Queen Emp. v. Taju Pramanick* (59).

The confession of co-prisoners cannot be treated as evidence of ordinary character as in addition to the infirmity inherent in an accomplice's testimony, they are not given on oath and are not liable to be tested by cross-examination: *Queen v. Naga* (60).

This section which makes the confession of one prisoner evidence against persons other than the man who made the confession applies only to cases in which the confession is made by a prisoner tried at the same time with the accused person against whom the confession is used: *Queen v. Shoit Buzoo* (61), *Emp. v. Bala Patel* (62).

A prisoner who pleads guilty at the trial and is thereupon convicted and sentenced cannot be said to be jointly tried with the other prisoners committed on the same charge who plead not guilty: *Reg. v. Kaly Patel* (63), *Queen v. Venkatasami* (64), *Queen Emp. v. Pahuji* (65), *Queen Emp. v. Laomaya Pandaram* (66), *Queen Emp. v. Pirbhu* (67).

The trial of an accused person does not necessarily end if he pleads guilty. Under s. 271 of the Code of Criminal Procedure where an accused pleads guilty "the plea shall be recorded" and the accused "may be convicted" thereon. But evidence may be taken in Sessions Cases as if the plea had been one of "not guilty" and the case decided upon the whole evidence including the accused's plea. When such a procedure is adopted the trial does not terminate with the plea of guilty, and therefore a confession by a person so pleading may be taken into consideration under s. 30 of the Evidence Act as against any other person who is being jointly tried with him for the same offence. A trial does not strictly end until the accused has been either convicted or acquitted or discharged: *Queen Emp. v. Ohima Pavuchi* (68). But it has been held in *Queen Emp. v. Paltna*, (69) that where several accused persons are being tried jointly for the same offence, and some of them plead guilty it is unfair to defer convicting those who have pleaded guilty merely in order that their confessions may be considered against the other accused. Section 30 is an exception and its wording shows that the confession is merely to be an element in the

(53) 19. W. R. 67. (54) 21. W. R. 53. (55) 25. W. R. 43. (56) I. L. R. 2. All. 444.
 (57) I. L. R. 2. All. 646. (58) I. L. R. 6. Bom. 288. (59) I. L. R. 25. Cal. 711.
 (60) 22. W. R. 24. (61) 21. W. R. 65. (62) I. L. R. 5. Bom. 62. (63) 11. B. H. O. R. 146
 (64) I. L. R. 7. Mad. 102. (65) I. L. R. 19 Bom. 125. (66) I. L. R. 22 Mad. 491.
 (67) I. L. R. 17. All. 526. (68) I. L. R. 23. Mad. 151. (69) I. L. R. 23. All. 53.

consideration of the evidence. Unless there is something more a conviction upon it will still be a case of no evidence and bad in law (7. Mad. H. C. R. Ap. 15).

Next as to the manner in which confessions are to be recorded by Magistrate we have the guidance afforded by ss. 164 and 364 of the Criminal Procedure Code, which say that every Magistrate not being a police officer may record any statement or confession made to him in the course of investigation under this chapter or at any time afterwards before the commencement of the enquiry or trial (s. 164) and whenever the accused is examined by any Magistrate or by any Court other than a High Court the whole of such examination including every question put to him and every answer given by him be recorded in full in the language in which he is examined or if that is not practicable in the language of the Court or in English (s. 364 para 1).

A confession duly recorded and certified under sec. 164 of the Criminal Procedure Code is admissible in evidence against the person making it unless shut out by the provisions of sec. 24 of Indian Evidence Act. A mere subsequent retraction of a confession which is duly recorded and certified by a Magistrate is not enough in all cases to make it appear to have been unlawfully induced: *Queen Emp. v. Baswanta* (70).

A Magistrate acts without discretion when he holds out promise to prisoners as an inducement to them to confess: *Queen v. Ramdharsing* (71).

An admission of a crime when fairly made after due warning is not inadmissible simply because at the time it was made no formal accusation had been made against the party making it: *Queen v. Ramcharan Chamar* (72).

The whole and not part of a prisoner's confession must be taken in order to his conviction: *Queen v. Okokookhan* (73), *Queen v. Shef Budhoo* (74), *Queen v. Sanaoolah* (75). It is only when properly made to the Magistrate that a confession can be used as evidence against the prisoner. The mere standing by of the Magistrate when the confession is being made to the police is not sufficient: *Queen v. Doman Kahar* (76). The confession of an accused person taken by a Magistrate having no jurisdiction to commit or try him, is imperfect if not signed by the accused person or attested by his mark and is inadmissible in evidence: *Reg. v. Bai Ratan* (77), *Reg v. Daya Anand* (78).

This section which requires a Magistrate to certify on a confession his belief that it was voluntarily made does not apply to the case of a confession

(70) L. L. R. 25 Bom. 123. (71) 1 W. R. 24. (72) 4 W. R. 10. (73) 5 W. R. 70.

(74) 8 W. R. 33. (75) 25 W. R. 22. (76) 12 W. R. 23. (77) 10 B. H. C. R. 166.

(78) 11, B. H. C. R. 44.

taken by a Magistrate who is actually investigating the case and examining the witnesses preparatory to commitment but to a case where some other Magistrate takes a confession and forwards it to the Magistrate by whom the case is enquired into or tried: *Queen v. Jetoo* (79), and *In re Ohamanshak* (80). A confession not recorded according to the provisions of sec. 364 is inadmissible as evidence: *Queen v. Kalachand* (81); but the contrary has been held in *Emp. v. Munshi Sheikh* (82), where the confession of an accused person was recorded in a simple narrative form instead of in the shape of question and answer as required by s. 364, and where it was held that the error did not affect the admissibility of the statement in evidence.

No oral evidence can be received to prove the fact of the confession if the confession itself is inadmissible: *Reg v. Shiva* (83), *Emperor v. Manoo* (84), and *Jai Narain v. Emperor* (85). But the contrary has been held in *Emperor v. Ramanuja* (86) and confession recorded by a Magistrate who afterwards conducts the enquiry preliminary to committal and has jurisdiction to do so is to be treated as an examination under s. 193 of the Criminal Procedure Code and not as a confession recorded under s. 164 notwithstanding that the prisoner may have been brought before the Magistrate before the conclusion of the police investigation. To such confession consequently the provisions of the last paragraph of s. 364 apply.

Section 164 of the Criminal Procedure Code contemplates and provides for cases in which confessions are recorded by a Magistrate other than the Magistrate by whom the case is enquired into or tried: *Emp. v. Anant Ramsing* (87), *In Re Behari Hadji* (88), *Kishno Monoo v. Emp.* (89), *Emp. v. Yakubkhan* (90).

But a confession does not become irrelevant merely because the memorandum required by law to be attached thereon by the Magistrate taking it has not been written in the exact form prescribed: *Emp. v. Bhairansing* (91). The confession of an accused person was recorded in a simple narrative form instead of in the shape of question and answer as required by s. 364. There was nothing in the character of the confession or in the circumstances of the case to lead to the inference that the accused had been prejudiced by the error. Held that the error did not affect the admissibility of the statement in evidence: *Emp. v. Munshi Sheikh* (92), *Titu Miya v. Reg.* (93), *Teku Mahto v. Emp.* (94). The confession of an accused person made in Bengali, the language in which he was examined, was recorded in English. The committing Magis-

(79) 23, W. R. 16. (80) I. L. R. 3, Cal 756. (81) 24, W. R. 29. (82) I. L. R. 8, Cal. 616.
 (83) I. L. R. 1, Bom. 219. (84) I. L. R. 4, Cal. 692. (85) I. L. R. 17, Cal. 862.
 (86) I. L. R. 2, Mad. 5. (87) I. L. R. 5, Cal. 964. (88) 5, Q. L. R. 238. (89) 6, Q. L. R. 289.
 (90) 2, L. R. 2, All. 283. (91) I. L. R. 3, All. 332. (92) I. L. R. 3, Cal. 616. (93) I. L. R. 3, Cal. 618.
 (94) I. L. R. 14, Cal. 539.

trate in his evidence in Court said that he could not write Bengali well and that there was no Mohurrir with him at the time when the confession was recorded. It was held that the provisions of s. 364 of the Criminal Procedure Code had been sufficiently complied with : *Queen Emp. v. Basai Mia* (95), *Lalchand v. Queen Emp.* (96), *Queen Emp. v. Kadar Naagar* (97). Although the record of a confession before the committing Magistrate was inadmissible as it did not bear the mark or signature of the accused, parol evidence could be given of the terms of the confession and those terms when proved might be admitted and used as evidence against the accused under the Code of Criminal Procedure : *Queen Emp. v. Baghoo* (98).

We now have to consider the question as to what is the effect of a retracted confession and what value is to be attached to it.

The confession of a prisoner before a Magistrate though retracted before the Judge is admissible in evidence against the prisoner provided the Judge be satisfied that it was voluntarily made : *Queen v. Sroomuby Mangola* (99), *Queen v. Musamat Jeena* (100). The case of *Queen v. Bhutan Raywar* (101), went a step further where it was held that the properly attested confession of a prisoner before a Magistrate was sufficient for his conviction without corroborative evidence and notwithstanding a subsequent denial before the Sessions Court. But the above ruling has been dissented from in *Queen v. Harsookh* (102), *In Re Sofrudin* (103), *Queen v. Bharmapa* (104), *Queen Emp. v. Jadubdass* (105), where it has been laid down that it is not safe to convict an accused person on his retracted confession standing by itself uncorroborated or on the statements of witnesses brought in under sec. 288 of the Code of Criminal Procedure without independent corroborating testimony : nor can these two be joined together and held as mutually corroborating each other so as to justify a conviction based on them. But it has been held in *Queen Emperor v. Gharya* (106) following *Reg. v. Balwant* (107) that a retracted confession if proved to be voluntarily made can be acted upon along with the other evidence in the case. There is no rule of law that a retracted confession must be supported by independent reliable evidence corroborating it in material particulars. The use to be made of such a confession is a matter of prudence rather than of law.

It is unsafe for a Court to rely on and act upon a confession which has been retracted unless upon a consideration of the whole evidence in the case the Court is in a position to come to the unhesitating conclusion

(95) I. L. R. 22, Cal. 217. (96) I. L. R. 18, Cal. 549.
 (97) I. L. R. 23, Cal. 604. (98) I. L. R. 23, Bom. 221. (99) 2, W. R. 81. (100) 2, W. R. 40.
 (101) 12, W. R. 43. (102) 2, N. W. P. 47. (103) 2 C. L. R. 132. (104) I. L. R., 12, Mad. 123.
 (105) I. L. R. 27 Cal. 295. (106) I. L. R. 19 Bom. 727. (107) 11, B. H. C. R. 137.

that the confession is true; that is to say unless the confession is corroborated by credible independent evidence: *Queen v. Mahabir* (108). But it does not necessarily follow because a confession made by an accused person is subsequently retracted and there is little or no evidence on the record to support the confession that therefore the confession is to be rejected. The credibility of such a confession is in each case a matter to be decided but the Court according to the circumstances of each particular case and if the Court is of opinion that such a confession is true the Court is bound to act as far as the person making it is concerned upon such belief: *Queen Emp. v. Maiku Lal* (109). Where the only evidence against two prisoners accused of murder directly implicating them in the commission of the crime consisted of confessional statements made by them before the committing Magistrate which were subsequently retracted and the statements in such confessions were corroborated in material particulars by other evidence on the record it was held that the evidence was sufficient to support a conviction: *Queen-Emp. v. Razi Nayar* (110).

A retracted confession should carry practically no weight as against a person other than the maker. It is not made on oath, it is not tested by cross-examination and its truth is denied by the maker himself who has thus lied on one or the other of the occasions. The very fullest corroboration would be necessary in such a case far more than would be demanded for the sworn testimony of an accomplice on oath: *Yasin v. King Emperor* (111). It cannot be laid down as an absolute rule of law that a confession made and subsequently retracted by a prisoner cannot be accepted as evidence of his guilt without independent corroborative evidence. A Jury should be asked with reference to such confessions not whether they were corroborated by independent evidence but whether having regard to the circumstances under which they were made and retracted and all the circumstances connected with them it was more probable that the original confessions or the statements retracting them were true: *Queen Emp. v. Raman* (112).

S. M. T.

RECENT ENGLISH CASES.

CONTRACT—*Assignability—Contract to supply goods to company—Assignment of contract—Liquidation of company—Rights of contracting company and assignee—Joinder of assignor in action.* The appellant, owner of chalk quarries, made a contract with the Imperial Portland Cement Company, Limited, by which it was agreed that he would for fifty years sup-

(108) L. L. R. 18 All. 78.

(109) L. L. R. 20 All. 122.

(110) L. L. R. 19 Mad. 452.

(111) L. L. R. 28 Cal. 689.

(112) L. L. R. 21, Mad. 35.

ply to the company and that the company should take and buy from him at least 750 tons of chalk per week at a certain price, and so much more (if any) as the company should require for the whole of their manufacture of Portland cement upon their land near the quarries. The Imperial Company afterwards assigned the contract and sold its undertaking, land, works, and business to the Associated Company, Limited, and went into voluntary liquidation, its affairs being wound up and its assets distributed:—*Held* (by Lords Macnaghten, Shand, and Lindley, the Earl of Halsbury L. C. doubting and Lord Robertson dissenting), that upon the true construction of the contract it must be read as if it had been expressed to be made with the Imperial Company, its successors and assigns, owners and occupiers of the works; that the Associated Company was entitled to the benefit of the contract, and could enforce it by action without joining the Imperial Company as plaintiffs. *Tolhurst v. Associated Portland Cement Manufacturers (1900), Limited. Tolhurst v. Associated Portland Cement Manufacturers (1900), Limited, and Imperial Portland Cement Company, Limited* (1903, A. C. 414).

HIGHWAY—Roadside strip—Land between fences separating highway from adjoining land—Presumption of dedication. In the case of an ordinary highway running between fences, although the space between them may be of a varying and unequal width, the right of passage or way *prima facie* and unless there be evidence to the contrary, extends to the whole of the ground between the fences, and the public are not confined to the metalled portion. All the space between the fences is presumably dedicated as highway unless the nature of the ground or other circumstances rebut that presumption, and the owner of the adjoining lands is not entitled to inclose any portion of it. Mere disuse of a highway for any length of time cannot deprive the public of their rights in respect of it. The mere consent of a highway authority to an obstruction or encroachment upon the highway is ineffectual for the purpose of legalising that obstruction or encroachment. *Harvey v. Truro Rural District Council* (1903, 2 Ch. 638).

REVIEWS.

The Madras Law Journal Supplemental Digest: 1901—1903 June. By S. SRINIVASA AYYAR, B. A., B. L., MADRAS. Greaves, Cookson & Co., Scottish Press. 1903. Roy. 8vo. Pages xx and 91. Price Re. 1.

THIS digest forms a supplemental volume to the consolidated Digest of the Madras Law Journal (1891-1900), which we reviewed some time ago. It is identical in arrangement and scope with the parent digest, and is greatly useful as furnishing a handy book of reference to the last three volumes of the Madras Law Journal.

The Provincial Small Cause Courts Act (IX of 1887). By H. O. SINHA and P. C. DUTT, B. L., Pleaders. Calcutta: S. K. Lahiri & Co., 54 College Street. 1903. Demi 8vo. Pages xvi and 70. Price Rs. 1-8-0.

THIS is a commentary on the Provincial Small Cause Courts Act. The notes are well-arranged and commendably concise. The book is handy and neatly printed.

The Madras Municipal Manual. By M. HAMMOCK, O. L. E., I. O. S., Secretary to the Government of Madras. MADRAS: Srtnivasa, Varadachari & Co., Mount Road. 1903. Demi 8vo. Pages xxxviii, 421 and 38. Price 5.

THIS Manual relating to matters municipal in Madras contains the Madras District Municipalities Act (Madras Act IV. of 1884), as amended by Madras Acts III of 1897 and I of 1899. Every section of the Act is carefully annotated. The annotations are collated from the Government orders issued under the Act and from the Madras cases decided under the Act and its predecessors, as well as those decided under the analogous provisions of similar Acts in force in the other parts of India. They are further enriched by a careful selection of English cases and by plentiful extracts from English text-books pertinent to the subject-matter. The appendices to the book contain much useful information. Appendix I reproduces the rules framed by the Madras Government under the Act, appendix II gives the notifications &c. issued under the Indian Railways Act, while appendix III sets out the provisions of the Local Authorities Loans Act (XI of 1879), the Local Authorities (Emergency) Loans Act, the Municipal Taxation Act, the Places of Resorts Act, and the Towns Nuisances Act. This hand-book embodies all available information on Municipal affairs useful not only to a corporator and a lawyer, but also to every citizen who has anything to do with a District Municipality within the presidency of Madras.

The Law of Contracts and Torts: Law Students' Series. By M. L. AGARWALLA, Advocate. ALLAHABAD: Ram Narsain Lal, Katra Road. 1903. Cr. 8vo. Pages xxxii and 422. Price Rs. 4.

THIS is the third hand-book published in the Law Students Series started by Mr. Agarywalla sometime ago. The plan and scope of the present manual is similar to those adopted in the Principles of Equity, which we reviewed some months ago. In the book in our hands, the learned author has handled the two important branches of law—Contracts and Torts. The principles of both are worked up with enough but not too much detail: and although it might not much help a student who attempts to learn the subjects by depending upon this manual alone, it will be useful to him in revising his studies when the examination is at hand.

THE ACTS OF THE GOVERNOR GENERAL OF INDIA
IN COUNCIL.

FOR THE YEAR 1903.

ACT NO. I OF 1903.

RECEIVED THE ASSENT OF THE GOVERNOR GENERAL ON THE 6TH MARCH, 1903.

An Act to facilitate the citation of certain enactments, to amend certain enactments and to repeal certain other enactments.

WHEREAS it is expedient to facilitate the citation of the enactments specified in the first schedule to this Act;

And whereas it is also expedient that certain formal amendments should be made in the enactments specified in the second schedule to this Act;

And whereas it is also expedient that certain enactments specified in the third schedule to this Act, which are spent, or have ceased to be in force otherwise than by express specific repeal, or have by lapse of time or otherwise become unnecessary, should be expressly and specifically repealed;

It is hereby enacted as follows:—

Short title.

1. This Act may be called the Repealing and Amending Act, 1903.

Citation of certain enactments.

2. Each of the enactments described in the first three columns of the first schedule may, without prejudice to any other mode of citation, be cited for all purposes by the short title mentioned in that behalf in the fourth column thereof.

Amendment of certain enactments.

3. The enactments specified in the second schedule are hereby amended to the extent and in the manner mentioned in the fourth column thereof.

Repeal of certain enactments.

4. The enactments specified in the third schedule are hereby repealed to the extent mentioned in the fourth column thereof.

5. The repeal by this Act of any enactment shall not affect any Act or Regulation in which such enactment has been applied, incorporated or referred to;

and this Act shall not affect the validity, invalidity, effect or consequences of any thing already done or suffered, or any right, title, obligation or liability already acquired, accrued or incurred, or any remedy or proceeding in respect thereof, or any release or discharge of or from any debt, penalty, obligation, liability, claim or demand, or any indemnity already granted, or the proof of any past act or thing;

nor shall this Act affect any principle or rule of law, or established jurisdiction, form or course of pleading, practice or procedure, or existing usage, custom, privilege, restriction, exemption, office or appointment, notwithstanding that the same respectively may have been in any manner affirmed, recognized or derived by, or from any enactment hereby repealed;

nor shall the repeal by this Act of any enactment provide or restore any jurisdiction, office, custom, liability, right, title, privilege, restriction, exemption, usage, practice, procedure or other matter or thing not now existing or in force.

THE FIRST SCHEDULE.

SHORT TITLES.

(See Section 2.)

1	2	3	4
Year.	No.	Title or subject.	Short title.

Part I—Regulations of the Bengal Code.

1798	XIX	A Regulation for re-enacting, with modifications, the rules passed by the Governor General in Council on the 1st December, 1790, for trying the validity of the titles of persons holding, or claiming a right to hold, lands exempted from the payment of revenue to Government, under grants not being of the description of those termed <i>badabahi</i> or royal; and for determining the amount of the annual assessment to be imposed on lands so held which may be adjudged or become liable to the payment of public revenue.	The Bengal Revenue-free Lands (Non-Badshahi Grants) Regulation, 1798.
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1793	XXXVII	A Regulation for re-enacting, with modifications, the rules passed on the 23rd April, 1788, and subsequent dates, for trying the validity of the titles of persons holding or claiming a right to hold Altamgha, jagir and other lands exempt from the payment of public revenue, under grants termed badahai or royal: and for determining when certain grants of that description shall be considered to have expired: and for fixing the amount of the public revenue to be assessed upon the lands the grants for which may expire or be adjudged invalid.	The Bengal Revenue-free Lands (Badahai Grants) Regulation 1798.
1794	III	A Regulation for prescribing the process by which Tahsil-dars are to demand payment of arrears; and for enabling the Collectors to recover from Native officers employed under them public money or papers which they may embezzle or retain.	The Bengal Native Revenue-officers Regulation, 1794.
1795	I	A Regulation for fixing in perpetuity the revenue assessed on the lands in the Province of Benares; for the more general restoration of the ancient zamindars.	The Benares Permanent Settlement Regulation, 1795.
	XV	A Regulation for referring certain cases to the decision of the Raja of Benares.	The Benares Family Domains Regulation, 1795.
	XXVII	A Regulation declaratory of certain reservations made by Government, and of rights preserved to the proprietors of landed estates, under the Permanent Settlement of the land-revenue made in the Province of Benares; for allowing of the transfer or division of entire estates or portions of estates; and prescribing rules for apportioning the fixed jama on the several shares of estates which may be divided, or portions of estates which may be transferred.	The Benares Permanent Settlement (Supplemental) Regulation, 1795.
	XLIV	A Regulation for removing certain restrictions to the operation of the Hindu and Muhammadan Laws with regard to the inheritance of landed property subject to the payment of revenue to Government in the Province of Benares.	The Benares Inheritance Regulation, 1795.
1798	I	A Regulation to prevent fraud and injustice in conditional sales of land under deeds of bai-bil-wafa or other deeds of the same nature,	The Bengal Land (Conditional Sales) Regulation, 1798.

1800	VIII	A Regulation for registers of estates paying revenue, and lands held exempt from the payment of revenue.	The Bengal Revenue-free Lands Regulation, 1800.
1801	I	A Regulation to explain and amend the rules for the division of joint estates and allotment of the fixed assessment thereupon.	The Bengal Land-revenue Assessment Regulation, 1801.
1803	XXXIII	A Regulation for preventing the embezzlement of public money and the withholding of public papers by the Native officers of Government in the Provinces ceded by the Nawab Wasir to the Hon'ble the English East India Company.	The United Provinces Native Revenue-officers Regulation, 1803.
1805	XII	A Regulation for the settlement and collection of the public revenue in the Zila of Cuttack, including the Parganas of Pataspur, Kamardahor and Bogral, at present included in the Zila of Midnapore.	The Cuttack Land-revenue Regulation, 1805.
"	XIV	A Regulation for the maintenance of the peace and for the support and administration of the Police in the Zila of Cuttack, and for amending certain provisions contained in Regulation IV, 1804.	The Cuttack Police Regulation, 1805.
1806	XVII	A Regulation for extending to the Province of Benares the rates of interest on future loans, and provisions relative thereto, contained in Regulation XV, 1793; also for a general extension of the period fixed by Regulations I, 1798, and XXXIV, 1803, for the redemption of mortgages and conditional sales of land, under deeds of bai-bil-wafa, kas-kabala or other similar designation.	The Bengal Land (Redemption and Foreclosure)-Regulation, 1806.
1810	XIX	A Regulation for the due appropriation of the rents and produce of lands granted for the support of mosques, Hindu temples, colleges and other purposes; for the maintenance and repair of bridges, sarais, kattaras and other public buildings; and for the custody and disposal of naktul property or ornaments.	The Bengal Charitable Endowments, Public Buildings and Bechats Regulation, 1810.
1812	V	A Regulation for amending some of the rules at present in force for the collection of the land-revenue.	The Bengal Land-revenue Sale Regulation, 1812.

1812	XVIII	A Regulation for explaining section 2, Regulation V, 1812, and rescinding sections 3 and 4, Regulation XLIV, 1793, and sections 2 and 4, Regulation L, 1795, and enacting other rules in lieu thereof.	The Bengal Land-revenue and Land revenue Regulation, 1812.
1814	XXIX	A Regulation for the settlement of certain mahals in the district of Birbhum, usually denominated the Ghatwali mahals.	The Bengal Ghatwali Lands Regulation, 1814.
1816	V	A Regulation for establishing the office of Kanungo in the district of Cuttack, the pargana of Pataspur, and the several parganas dependant on it.	The Bengal Kanungos Regulation, 1816.
"	IX	A Regulation for the appointment of a Commissioner of Revenue within that portion of the districts of the 24 parganas, Nadia, Jessore and Backergunge commonly denominated the Sundarbans.	The Sundarbans Regulation, 1816.
1817	XII	A Regulation for securing the better administration of the office of Patwari in the Ceded and Conquered Provinces, the Provinces of Behar and Benares, the district of Cuttack, the pargana of Pataspur and its dependencies.	The Bengal Patwaris Regulation, 1817.
"	XX	A Regulation for reducing into one Regulation, with amendments and modifications, the several rules which have been passed for the guidance of daroghas and other subordinate officers of police.	The Bengal Police Regulation, 1817.
1819	I	A Regulation for re-establishing Kanungos and reforming the office of Patwari throughout the Provinces of Bengal; and for explaining and modifying certain parts of Regulation XII, 1817.	The Bengal Kanungos and Patwaris Regulation, 1819.
"	II	A Regulation for modifying the provisions contained in the existing Regulations regarding the resumption of the revenue of lands held free of assessment under illegal or invalid tenures, and for defining the right of Government to the revenue of lands not included within the limits of estates for which a settlement has been made.	The Bengal Land-revenue Assessment (Resumed Lands) Regulation, 1819.
1821	IV	A Regulation for explaining the duties of an Assistant Collector of Revenue, and for defining the duties and powers vested in Assistant Collectors or other officers	The Bengal Land-revenue (Assistant Collectors) Regulation, 1821.

- appointed to the charge of the revenues of parganas or other local divisions, or employed in the performance of any portion of the functions ordinarily belonging to the Collectors of land-revenue.
- 1822 III A Regulation for modifying the constitution and altering the jurisdiction of the several Boards vested with the superintendence of the land-revenue in the territories belonging to the Presidency of Fort William. The Bengal Board of Revenue Regulation, 1822.
- VII A Regulation for declaring the principles according to which the settlement of the land-revenue in the Ceded and Conquered Provinces, including Outack, Pataspur and its dependencies, is to be hereafter made, and the powers and duties belonging to Collectors or other officers employed in making, revising or superintending settlements; for defining, settling and recording the rights and obligations of various classes and persons possessing an interest in the land, or in the rent or produce thereof; and for vesting the Revenue-authorities with judicial cognisance in certain cases of suits and claims relating to land, the rent and produce of land. The Bengal Land-revenue Settlement Regulation, 1822.
- XI A Regulation for declaring Government not to be liable for any errors or irregularities in the proceedings of the Courts of Justice; and for making further provision for the conduct of the Revenue officers in certain cases. The Bengal Government Indemnity Regulation, 1822.
- 1823 VI A Regulation for authorizing the institution of summary suits to enforce the execution of certain written engagements for the cultivation and delivery of the indigo plant, and for declaring certain principles in regard to the same. The Bengal Indigo Contracts Regulation, 1823.
- 1825 IX A regulation for extending the operation of Regulation VII, 1822; for authorizing the Revenue authorities to let in farm estates under temporary leases, on the default of the malguzars, or to hold the same khas for a term of years; for modifying and adding to the rules

- 1825
- XIII A Regulation to maintain the settlement made for certain lands held exempt from the payment of revenue by Kanungos in the Province of Behar; and to provide for the future settlement of such lands, as well as of the lands composing other resumed lakhirs, tenures, with the present occupants, when so directed by Government. The Bengal Land-revenue Settlement (Resumed Kanungo's and Revenue-free Lands) Regulation, 1825.
- XIV A Regulation to declare the extent of the authority possessed by the Revenue authorities, subordinate to the Governor General in Council, in the confirmation of lakhirs, tenures; to define the principles to be followed in determining on the force and validity of grants made by persons exercising authority in different quarters previously to the acquisition of the country by the British Government; and to provide for the due application of the general laws and regulations respecting lands held free of assessment to the territory ceded by Govind Rao to the British Government, and annexed to the sile of Bundelkhand, under the provisions of Regulation II, 1818. The Bengal Revenue-free Lands Regulation, 1825.
- 1828
- III A Regulation for the appointment of special Commissioners for the more speedy hearing and determination of appeals from the decisions of the Revenue authorities in regard to lands or rents occupied or collected by individuals, without payment of the revenue demandable by Government, under the general law of the country; and for otherwise more effectually securing the realization of the public dues. The Bengal Land-revenue Assessment, Resumed Lands, Regulation, 1828.
- IV A Regulation to declare and extend the powers to be exercised by Collectors when making or revising settlements under the provisions of Regulation VII, 1822. The Bengal Land-revenue Settlement Regulation, 1828.
- VII A Regulation for amending the provisions of Regulation XV, 1795, The Benares Family Domains Regulation, 1828.

		and for defining the authority of the Raja of Benares in the Mahala therein referred to.	
1829	I A	Regulation for constituting Commissioners of Revenue and Circuits for establishing a Sadr Board of Revenue; for modifying the constitution of the Provincial Councils; for transferring to the said Commissioners the functions now exercised by the Superintendents of Police and those of the mufassal special Commissioners acting under the provisions of Regulation I, 1821; and otherwise for providing for the better administration of Civil and Criminal Justice.	The Bengal Revenue Commissioners Regulation, 1829.
1830	V A	Regulation relating to the cultivation and delivery of Indigo plant.	The Bengal Indigo Contracts Regulation, 1830.
1833	IX A	Regulation to modify certain portions of Regulation VII, of 1822 and Regulation IV of 1828; to provide for the more speedy and satisfactory decision of Judicial questions cognisable by officers of revenue employed in making settlements under the above Regulations; for enforcing the production of the village accounts; for the more extensive employment of Native agency in the Revenue Department; and to declare the intent of section I, Regulation VII of 1822, touching claims to malikana.	The Bengal Land-revenue (Settlement and Deputy Collectors) Regulation, 1833.
1836	X	Indigo Contracts	The Bengal Indigo Contracts Act, 1836.
"	XXI	Districts... ..	The Bengal Districts Act, 1836.
1841	XII	An Act for amending the Bengal Code in regard to sales of land for arrears of revenue.	The Bengal Land revenue Sales Act, 1841.
1847	IX	An Act regarding the assessment of lands gained from the sea or from rivers by alluvion or dereliction within the Provinces of Bengal, Behar and Orissa.	The Bengal Alluvion and Diluvion Act, 1847.
1848	XX	An Act for better enforcing the attendance of proprietors and farmers of land before Collectors of land revenue in the Lower Provinces of the Bengal Presidency.	The Bengal Landholders' Attendance Act, 1848.
1850	XIII	An Act for securing the Land revenue of Calcutta.	The Calcutta Land revenue Act, 1850.

1850	XLIV	An Act for consolidating the Board of Customs, Salt and Opium and the Sadr Board of Revenue in the Lower Provinces of Bengal.	The Bengal Board of Revenue Act 1850.
1855	XXXII	An Act relating to Embankments.	The Bengal Embankment Act, 1855.
"	XXXVII	An Act to remove from the operation of the General Laws and Regulations certain districts inhabited by Sonthals and others and to place the same under the superintendence of an officer to be specially appointed for that purpose.	The Sonthal Parganas Act, 1855.
1856	XVII	An Act relating to the administration of the public revenues in the Town of Calcutta.	The Calcutta Land revenue Act 1856.
"	XX	An Act to make better provision for the appointment and maintenance of Police Chaudhars in Cities, Towns, Stations, Suburbs and Bazaris in the Presidency of Fort William in Bengal.	The Bengal Obaukidari Act, 1856.
"	XXII	An Act for establishing a toll on boats and timber passing through the Karatoya river in the district of Bogra.	The Karatoya Tolls Act, 1856.
1857	X	An Act to amend Act XXXVI of 1855.	The Sonthal Parganas Act, 1857.
"	XIII	An Act to consolidate and amend the law relating to the cultivation of the poppy and the manufacture of opium in the Presidency of Fort William in Bengal.	The Opium Act, 1857.
"	XXI	An Act to make better provision for the order and good government of the station of Howrah.	The Howrah Offences Act, 1857.
1858	XXXI	An Act to make further provision for the settlement of land gained by alluvion in the Presidency of Fort William in Bengal.	The Bengal Alluvial Land Settlement Act, 1858.
1859	V	An Act to empower the holders of ghatwali lands in the district of Birbhum to grant leases extending beyond the period of their own possession.	The Bengal Ghatwali Lands Act, 1859.
"	X	An Act to amend the law relating to the recovery of rent in the Presidency of Fort William in Bengal.	The Bengal Rent Act, 1859.
"	XI	An Act to improve the law relating to sales of land for arrears of revenue in the Lower Provinces under the Bengal Presidency.	The Bengal Land revenue Sales Act, 1859.
"	XII	An Act to make better provision for the trial of Pilots at the Presidency of Fort William in Bengal for breach of duty.	The Calcutta Pilots Act, 1859.

1867	XIX	An Act to make further provision for the administration of justice in the district of Darjeeling.	The Darjeeling (High Court's jurisdiction) Act, 1867.
"	XXIII	An Act for the suppression of murderous outrages in certain districts of the Punjab.	The Punjab Murderous Outrages Act, 1867.
1871	XXII	An Act to authorise the extension of the Chaukidari Act to places where there is no Jamadar of Police.	The Bengal Chaukidari (Amendment) Act, 1871.
1876	VII	An Act to extend the Criminal Tribes Act, 1871, to the Lower Provinces of Bengal, and to amend the same Act.	The Criminal Tribes (Amendment) Act, 1876.
1877	IX	An Act to receive and amend Act No. XXIII of 1867.	The Punjab Murderous Outrages (Amendment) Act, 1877.
1878	XII	An Act for the further amendment of the Punjab Laws Act, 1872.	The Punjab Laws (Amendment) Act, 1878.
1881	VII	An Act to amend Bengal Act No. IX of 1880 (the Cess Act, 1880).	The Bengal Cess (Amendment No. 1) Act, 1881.
1883	VI	An Act to give power to arrest persons whose evidence is needed under Act XII of 1859.	The Calcutta Pilots (Amendment) Act, 1883.
1884	V	An Act to amend the Chota Nagpur Encumbered Estates Act, 1876.	The Chota Nagpur Encumbered Estates (Amendment) Act, 1884.
1886	VIII	An Act to amend sections 12 and 13 of the Bengal Tenancy Act, 1885.	The Bengal Tenancy (Amendment) Act, 1886.
1895	XIX	An Act to amend the Punjab Courts Act, 1884.	The Punjab Courts (Amendment) Act, 1895.
1896	XVII	An Act to amend the Punjab Courts Act 1887.	The Punjab Land revenue (Amendment) Act, 1896.
"	XVIII	An Act to amend the Punjab Municipal Act 1891.	The Punjab Municipal (Amendment) Act, 1896.
1862	III	An Act to amend Act XI of 1859 (to improve the law relating to sales of land for Arrears of Revenue in the Lower Provinces under the Bengal Presidency).	The Bengal Land Revenue Sales (Amendment) Act, 1862.
"	VI	An Act to amend Act X of 1859 (to amend the law relating to the recovery of Rent in the Presidency of Fort William in Bengal).	The Bengal Rent Act, 1862.
"	VII	An Act to repeal section 20 of Regulation II, 1819 (for modifying the provisions contained in the existing Regulations regarding the Resumption of the revenue of lands held free of assessment under illegal or invalid tenures, and for defining the right of Government to the revenue of lands not included within the limits of estates for which a settlement has been made).	The Bengal Land revenue Resumption Act, 1862.

1862	VIII	An Act to improve the system of Zamindari Daks in the Provinces subject to the Government of Bengal.	The Bengal Zamindari Dak Act, 1862.
1863	II	An Act to abate and prevent nuisances arising from the smoke of furnaces in the Town and Suburbs of Calcutta.	The Calcutta and Howrah Smoke Nuisances, Act, 1863.
1864	IV	An Act to amend Act XXI of 1836.	The Bengal Districts Act, 1864.
1865	IV	An Act for the prohibition of the practice of inoculation in the Town and Suburbs of Calcutta and in towns to which Act III of 1864, passed by the Lieutenant-Governor of Bengal in Council, has been or shall hereafter be extended.	The Bengal Prevention of Inoculation Act, 1865.
"	VII	An Act to make provision for the better regulation and supervision of Public Slaughterhouses in the Suburbs of Calcutta, and for the adoption of proper conservancy arrangements connected therewith.	The Bengal Municipal (Slaughterhouses and Meat-markets) Act, 1865.
"	VIII	An Act to amend the law for the sale of such undertenures as by the titled deeds or established usage of the country transferable by sale or otherwise for the recovery of arrears of rent due in respect thereof.	The Bengal Rent Recovery (Under-tenures) Act, 1865.
1866	II	An Act to provide for better regulation of the Police within the suburbs of the town of Calcutta.	The Calcutta Suburban Police Act, 1866.
"	III	An Act to provide for the attendance and examination of witnesses before the Council of the Lieutenant-Governor of Bengal for making Laws and Regulations.	The Bengal Legislative Council (Witnesses) Act, 1866.
"	VII	An Act to make better provision for the acquisition of land for embankments, and other matters relating thereto.	The Bengal Embankment Act 1866
1867	II	An Act to provide for the punishment of public gambling and the keeping of common gaming-houses in the territories subject to the Lieutenant-Governor of Bengal.	The Bengal Public Gambling Act, 1867.
"	III	An Act to amend the law relating to ships lying in ports in the Provinces under the control of the Lieutenant-Governor of Bengal.	The Bengal Ports Act, 1867.
"	IV	An Act to explain and amend Act VI of 1862, passed by the Lieutenant-Governor of Bengal in Council, and to give validity to certain judgments.	The Bengal Rent (Appeals) Act, 1867.

1868	III	An Act to amend the law respecting appeals in cases under Regulation VII of 1823.	The Bengal Land-revenue Settlement Act, 1868.
"	IV	An Act to amend the provisions of Act IX of 1847 (an Act regarding the assessments of lands gained from the sea or from rivers by alluvion dereliction within the Provinces of Bengal, Behar and Orissa).	The Bengal Alluvion (Amendment) Act, 1868.
"	VII	An Act to make further provision for the recovery of arrears of land-revenue and public demands recoverable as arrears of land revenue.	The Bengal Land-revenue Sales Act 1868.
1869	I	An Act of the Prevention of Cruelty to Animals.	The Bengal Cruelty to Animals Act, 1869.
"	III	An Act to enable Police-officers to arrest without warrant persons guilty of Cruelty to Animals.	The Bengal Cruelty to Animals (Arrest) Act, 1869.
"	VII	An Act to amend the constitution of the Police force in Bengal.	The Bengal Police Act, 1869.
1871	I	An Act to amend the Village Chaudkari Act, 1870.	The Bengal Village Chaudkari Act, 1871.
"	II	An Act to amend the procedure for the recovery of arrears of land-revenue in respect of tenures not being estates.	The Bengal Land-revenue Sales (Amendment) Act, 1871.
1873	I	An Act to amend the Salt Act, 1864.	The Bengal Salt Act, 1873.
"	IV	An Act for registering Births and Deaths.	The Bengal Births and Deaths Registration Act, 1873.
1876	I	An Act to provide for the voluntary Registration of Muhammadan Marriages and Divorces.	The Bengal Muhammadan Marriages and Divorces Regulation Act, 1876.
"	II	An Act to amend Act XI of 1849, Act XXI of 1856 and Act IV (A.O.) of 1866.	The Calcutta Police (Amendment) Act, 1876.
1878	V	An Act to amend Bengal Act VII of 1876.	The Bengal Land Registration (Amendment) Act, 1878.
1879	I	An Act to amend and extend the Pari Lodging-house Act, 1871.	The Pari Lodging-house (Extension) Act 1879.
"	III	An Act to provide for the periodical inspection of Steam boilers and Primemovers attached thereto in the Town and suburbs of Calcutta and in Howrah.	The Bengal Steam-boilers and Primemovers Act, 1879.
"	VIII	An Act to define and limit the powers of Settlement-officers.	The Bengal Rent Settlement Act, 1879.
1880	III	An Act to amend the Howrah Bridge Act, 1871.	The Howrah Bridge Act, 1880.
1881	II	An Act to amend the Cess Act, 1880.	The Bengal Cess (Amendment No. 2) Act, 1881.
"	III	An Act to amend the Court of Wards Act, 1879.	The Bengal Court of Wards (Amendment) Act, 1881.

1833	I	An Act to amend the Bengal Excise Act, 1878.	The Bengal Excise (Amendment) Act, 1883.
"	V	An Act for the Registration and Control of Porters and Dandewallas in the Darjeeling and Kurseong Municipalities.	The Darjeeling and Kurseong Municipal (Porters) Act, 1883.
1884	I	An Act further to amend Bengal Act IV of 1871.	The Puri Lodging-house (Extension) Act, 1884.
"	II	An Act to amend the Calcutta Tramways Act, 1880.	The Calcutta Tramways (Amendment) Act, 1884.
1886	I	An Act to further amend the Village Chaukidari Act, 1870.	The Bengal Village Chaukidari (Amendment) Act, 1886.
"	II	An Act to amend Act II (B.O.) of 1866, and the Calcutta Police Act, 1866.	The Calcutta and Suburban Police (Amendment) Act, 1886.
"	III	An Act to amend Act III (B.C.) of 1884.	The Bengal Municipal (Amendment) Act 1886.
1887	II	An Act to amend Bengal Act V of 1880.	The Bengal Vaccination (Amendment) Act, 1887.
1889	IV	An Act to provide for the appointment of a Muhammadan Burial Board in Calcutta, and to make better provision for the interment of persons other than Christians or Muhammadans.	The Calcutta Burial Boards Act, 1889.
1890	I	An Act to consolidate the Calcutta and the Suburban Police Superannuation Funds.	The Calcutta and Suburban Police (Superannuation Fund) Act, 1890.
"	II	An Act to amend the Bengal Vaccination Act, 1880.	The Bengal Vaccination (Amendment) Act, 1890.
1892	I	An Act to further amend the Village Chaukidari Act, 1870.	The Bengal Village Chaukidari (Amendment) Act, 1892.
1894	II	An Act to amend the Calcutta Port Act, 1890.	The Calcutta Port (Amendment) Act, 1894.
"	IV	An Act, to amend the Bengal Municipal Act, 1884.	The Bengal Municipal (Amendment) Act 1894.
1895	II	An Act to further amend the Suburban Police Act, 1866, and the Calcutta Police Act, 1866.	The Calcutta and Suburban Police (Amendment) Act, 1895.
"	IV	An Act to further amend the Calcutta Port Act, 1890.	The Calcutta Port (Amendment No. 1) Act, 1895.
"	VI	An Act to further amend the Calcutta Port Act, 1890.	The Calcutta Port (Amendment No. 2) Act, 1895.
1896	II	An Act to further amend the Bengal Municipal Act, 1884.	The Bengal Municipal (Amendment) Act, 1896.
1897	I	An Act to amend the Public Demands Recovery Act, 1895.	The Bengal Public Demands Recovery (Amendment) Act, 1897.
1899	II	An Act to repeal the Civil Courts Amins Act, 1856, in Bengal.	The Bengal Civil Court Amins Act, 1899.

THE SECOND SCHEDULE.

AMENDMENTS.

(See Section 3.)

1	2	3	4
Year.	No.	Subject or short title.	Amendments.

Part I.—Regulations of the Bengal Code.

1793	II	The Bengal Land-revenue Regulation; 1793.	In section 18, after Collector insert or. In sections 36, 38, 39, 40, 42, 43, and 45, the words Governor General in Council, wherever they occur, shall be read as if the words Local Government were substituted therefor. In section 40, the word his shall be read as if the word its were substituted therefor. In section 45, the word him shall be read as if the word it were substituted therefor.
	VIII	The Bengal Decennial Settlement Regulation, 1793.	In section 20, the words Governor General in Council shall be read as if the words Local Government were substituted therefor. In section 21, the word Government shall be read as if the words the Local Government were substituted therefor.
"	XIX	Revenue-free Lands (Non-Badshahi Grants).	In sections 2, 3, 8 and 15, the words Governor General in Council, wherever they occur, shall be read as if the words Local Government were substituted therefor. In section 2, Clause Fourth, the word him shall be read as if the word it were substituted therefor. In section 10, the words Governor General in Council shall be read as if the words Governor General in Council or the Local Government were substituted therefor. In section 15, the word him, where it last occurs, shall be read as if the word it were substituted therefor.
"	XXXVII	Revenue-free Lands (Badshahi Grants).	In sections 2, 3, 5 and 10, the words Governor General in Council, where

			over they occur, shall be read as if the words Local Government were substituted therefor.
1799	V	The Bengal Wills and Intestacy Regulation, 1799.	In section 10, the word him, where it last occurs, shall be read as if the word it were substituted therefor.
			In section 7, the words Governor General in Council shall be read as if the words Local Government were substituted therefor, and the word his, where it last occurs, shall be read as if the word its were substituted therefor.
1803	XII	Land-revenue, Cuttack.	In sections 18, 20, 26, 28 and 30, the words Governor General in Council, wherever they occur, shall be read as if the words Local Government were substituted therefor.
			In section 18, clause Third, the word himself shall be read as if the word itself were substituted therefor.
			In section 18, clause Fifth, the word him shall be read as if the word it were substituted therefor.
			In section 22, for through the Board of Revenue for the information of the Governor General in Council substitute to the Board of Revenue.
1805	XIII	Police, Cuttack	In section 3, the words the Governor General in Council, by an order in Council, shall be read as if the words the Local Government, by notification in the Calcutta Gazette were substituted therefor.
			In section 4, clause, Fourth, the words Governor General in Council shall be read as if the words Local Government were substituted therefor.
1810	XIX	Charitable Endowments, Buildings and Escheats.	In section 3, for those Boards substitute the Board of Revenue.
			In section 4, for Boards substitute Board.
			In section 8, for those Boards respectively substitute the Board.
			In section 9, the words Governor General in Council shall be read as if the words Local Government were substituted therefor.
			In section 12, for superior Boards substitute Board of Revenue, and for Boards substitute Board.
			In section 13, for superior Board substitute Board of Revenue.

1812	V	Land-revenue Sales.	In section 25, the words Governor General in Council shall be read as if the words Local Government were substituted therefor.
"	XI	The Bengal Foreign Immigrants Regulation, 1812.	At the end of section 5, for the said Regulation substitute this Regulation.
1814	XXIX	Ghatwali Lands	In section 5, the words Governor General in Council wherever they occur, shall be read as if the word Local Government were substituted therefor.
1816	V	Kanungos	In sections 5 and 11, the words Governor General in Council wherever they occur, shall be read as if the words Local Government were substituted therefor.
"	IX	Sundarbans	In section 2, the words Governor General in Council shall be read as if the words Local Government were substituted therefor. In the same section, for Regulations substitute Laws.
1817	XII	Patwaris	In section 18, the words Governor General in Council shall be read as if the words Local Government were substituted therefor.
1819	I	Kanungos and Patwaris.	In section 4, the words Governor General in Council, wherever they occur, shall be read as if the words Local Government were substituted therefor.
"	II	Land-revenue Assessment (Resumed Lands).	In section 4, clause Third, the word he shall be read as if the word it were substituted therefor.
"	VIII	The Bengal Patni Taluqs Regulation, 1819.	In section 13, clause Third, and in section 14, the words Governor General in Council shall be read as if the words Local Government were substituted therefor. In section 21, clause Second, for Boards substitute Board.
1820	I	The Bengal Patni Taluqs Regulation, 1820.	In section 9, and in section 14, clause Second, for notes of the Bank of Bengal substitute currency notes.
1821	IV	Land-revenue (Assistant Collectors).	In section 2, for the general Regulations substitute Law. In section 7, for by the Regulations substitute by law, and for the Regulations already in force substitute the law for the time being in force. In section 8, the words Governor General in Council, wherever they occur, shall be read as if the words Local Government were substituted therefor.

1822

III Board of Revenue

VII Land-Revenue Settlement

In section 8, clause *Fifth*, for by the Regulations *substitute* by the laws, and for to the Regulations *substitute* to law.

In the title, for the words from and altering to the end, *substitute* of the Board of Revenue and for controlling the distribution of powers between the members of the Board.

In section 4, clause *First*, for The said Boards shall each of them *substitute* The Board of Revenue for the Lower Provinces of the Presidency of Fort William in Bengal shall.

In section 5, clause *First*, for any of the said Boards *substitute* the said Board.

In section 5, second proviso and clause *Second*, for a Board *substitute* the Board.

In section 5, clauses *Third* and *Sixth*, for Boards *substitute* Board.

In section 2, clause *Sixth*, for the words as aforesaid, where they first occur, *substitute* acknowledged as the proprietor or possessor of a permanent interest in the mahal for which he has engaged.

In section 3, the words Governor General in Council, wherever they occur, shall be read as if the words Local Government were substituted therefore, and the words by an Order in Council, shall be read as if the words by notification in the local official Gazette were substituted therefore.

In section 5, section 6, clause *Second*, section 7, clause *First*, section 8 section 9, clause *Third*, section 10, clause 1, 2 and sections 16, 17, 32, the words Governor General in Council, wherever they occur, shall be read as if the words Local Government were substituted therefore; and in section 35, the words Governor General in Council, in the second place where they occur, shall be read as if the words Local Government were substituted therefore.

In section 9, clause *Third* for Boards *substitute* Boards, and for such a Board *substitute* that Board.

In section 10, clause *Ninth*, section 16, proviso, and section 32, for the word Boards, wherever it occurs *substitute* Board.

1825

IX Land-Revenue Settlement

In section 3, for Regulation substitute law.

In section 20, clause *First*, the words *The Government* by an Order in Council shall be read as if the words the Local Government by notification in the local official Gazette were substituted therefore, the word *he* shall be read as if the word *it* were substituted therefore and the word *Government* shall be read as if the words the Local Government were substituted therefore.

In section 20, clause *Second* the word Governor General in Council and the words Governor general shall be read as if the words Local Government were substituted therefor, and the words by an Order in Council shall be read as if the words by notification in the local official Gazette were substituted therefor.

In section 23, clause *First*, for other Regulation substitute other law.

In section 24, clause *Second*, for the existing Regulations substitute any other law.

In section 26, for such suits substitute suits the cognizance of which is hereby vested in Collectors.

In section 3, section 4, section 5, clause *Eighth*, section 6 and section 8, the words Governor General in Council wherever they occur, shall be read as if the words Local Government were substituted therefor.

In section 3, after Behar insert or.

In section 6, the words an Order in Council shall be read as if the words notification in the local official Gazette were substituted therefor.

In section 8, for the words rules respectively substitute section.

In section 2 and 5, the words Governor General in Council, wherever they occur, shall be read as if the words Local Government were substituted therefor.

In the first paragraph of section 2, the word *he* shall be read as if the word *it* were substituted therefor.

In section 3 for Regulations substitute law.

In section 1 and section 3, clause *Fifth*, for Regulations VIII and substitute Regulation.

[1825]

XIII Land-revenue Settlement

XIV Revenue-free Lands

			In section 2 and 3, the words Governor General in Council, wherever they occur, shall be read as if the words Local Government were substituted therefor.
			In section 3, clause Fifth, the word his, where it last occurs, shall be read as if the word its were substituted therefor.
			In section 6, for Revenue Boards substitute Board of Revenue, and for these Boards substitute that Board.
1827	III	The Bengal Corruption and Extortion Regulation, 1827.	In section 5, for a Court of Circuit or the Nizam Adalat substitute the Court.
"	V	The Bengal Attached Estates Management Regulation, 1827.	In section 3, for several Regulations substitute Regulation.
1828	III	Land-revenue Assessment (Resumed Lands).	In section 10, clauses Second and Third, for Boards substitute the Board.
"			In section 13, clause First the words Governor General in Council and the word he shall be read as if the words Local Government and the word it were respectively substituted therefor.
"	IV	Land-revenue Settlement.	In section 2, clause Forth for aforesaid substitute vested with the powers of a Collector.
1838	XIII	Land-revenue (Settlement and Deputy Collectors).	In the title, for Regulations, substitute regulation and, in section 1 for those Regulations substitute that Regulation.
			In section 12 and 13, for Boards substitute Board.
			In section 16, the words Governor General in Council shall be read as if the words Local Government were substituted therefor.

Part II.—Acts of the Governor General in Council.

1836	XXI	Districts	The words the Governor General in Council by an Order in Council shall be read as if the words the Local Government, with the previous sanction of the Governor General in Council, by notification in the local official Gazette were substituted therefor.
1859	X	Rent	In sections 136 and 151, for Boards substitute Board.
"	XI	Land-revenue Sales	In section 22, after post bills insert currency notes.
			In section 32, for section 25 substitute section 2 of the Bengal Land revenue Sales Act, 1866.
			In section 33, for section 25 of this

1859	XII	Calcutta Pilots	Act ~~substitute~~ section 2 of the Bengal Land revenue Sales Act, 1838. In section 2 and 18 for the words Superintendent of Marine, ~~wherever they occur~~ , substitute Port Officer.
1861	V	The Police Act, 1861	In section 34, after imprisonment insert with or without hard labour.
1867	III	The Public Gambling Act, 1867.	In the title, for the Central Provinces and British Burma substitute and the Central Provinces. In the preamble, for of the Chief Commissioner of the Central Provinces and of the Chief Commissioner of British Burma, substitute and of the Chief Commissioner of the Central Provinces. In section 1, for the definitions of Lieutenant Governor and Chief Commissioner substitute the following, namely:— "Lieutenant Governor" means the Lieutenant Governor of the United Provinces of Agra and Oudh or of the Punjab, as the case may be: "Chief Commissioner means the Chief Commissioner of the Central Provinces or of the North-West Frontier Province, as the case may be.
1872	XV	The Indian Christian Marriage Act, 1872.	In section 82, for certificates of marriages and also for marriage certificates, substitute certificates for marriage. In schedule II, after declaration insert or oath.
1878	XII	Laws, Punjab (amending Act, IV of 1872.)	In section 2, for 18 substitute 16.
1879	XIV	The Hackney Carriage Act, 1879.	In section 3, for The Lieutenant Governors of the North-Western Provinces and the Punjab and the Chief Commissioners of Oudh, the Central Provinces, British Burma, substitute The Lieutenant Governors of the United Provinces of Agra and Oudh, the Punjab and Burma, and the Chief Commissioner of the Central Provinces.
"	XVIII	The Legal Practitioners Act, 1879.	In section 42 (added by the Legal Practitioners Act, 1884, section 9), before the words and figures Act, 1 of 1846 insert Somnath of Chapter VI of Bombay Regulation II of Bombay Regulation II of 1827 as has not been repealed.
1881	XIII	The Fort Williams Act, 1881.	In section 1, for Army Discipline and

			Regulation Act, 1870, <i>substitutes</i> Army Act.
			In section 5, <i>for</i> Presidency Magistrate Act, 1877, <i>substitute</i> Code of Criminal Procedure, 1898; and <i>for</i> the High Courts Criminal Procedure Act, 1878, section 147 <i>substitute</i> section 526 of that Code.
			In section 7, <i>for</i> Magistrates appointed under the Presidency Magistrates Act, 1877, <i>substitute</i> Presidency Magistrates.
1889	V	The Coroners (Madras) Act, 1889.	In the preamble and in section 4, subsection (2), as amended by the Repealing and Amending Act, 1891 <i>for</i> the Code Criminal Procedure, 1882, <i>substitute</i> the Code of Criminal Procedure 1898.
	XIII	The Cantonments Act, 1889.	In section 8, subsection (1), <i>for</i> in the case of a cantonment for which such a committee has not been constituted, <i>substitute</i> where a cantonment committee has not been constituted, or has in pursuance of an order of the Local Government ceased to exist, or for any reason cannot be convened, then, subject to any rules made under section 26, clause (5).
1897	X	The General Clauses Act, 1897.	In section 3, clauses (5), (6), (30) and (35) <i>after</i> under <i>insert</i> the Indian Councils Act, 1861, or.
			In section 3, <i>after</i> clause (9), <i>insert</i> the following :— (8 a) "Burma Act" shall mean an Act made by the Lieutenant-Governor of Burma in Council under the Indian Councils Acts, 1861 and 1892.
			In section 3 <i>after</i> clause (41), <i>insert</i> the following :— (44 a) "Punjab Act" shall mean an Act made by the Lieutenant-Governor of the Punjab in Council under the Indian Councils Acts, 1861 and 1892.
	X	The General Clauses Act, 1897— <i>contd.</i>	In section 3, <i>after</i> clause (55), <i>insert</i> the following :— (55 a) "United Provinces Act" shall mean an Act made by the Lieutenant-Governor of the North-Western Provinces and Oudh (or, of the United Provinces of Agra and Oudh) in Council under the Indian Councils Acts, 1861 or the Councils Acts 1881 and 1892.

1898

V The Code of Criminal Procedure,
1898.

In section 20, before the word order, in each of the places in which it occurs, insert notification.

In section 21, for make substitute issue notifications, between the words and orders insert notifications, and for made substitute issued.

In section 24, before the word order, in each of the places in which it occurs, insert appointment, notification; and before the word issued in each of the places in which it occurs, insert made or.

In section 260, sub section (1), clause (i) after 451 insert 453, 454.

In section 554 for 553 substitute 554.

In the second schedule, column 5, against section 195, for Bailable substitute Not bailable.

In the second schedule, column 8, against section 506, for Ditto substitute Presidency, Magistrate or Magistrate of the first or second class.

In the heading to the fifth schedule, for 554 substitute 555.

In the fifth schedule, Form IV, for within days from this date substitute on the day of

In the fifth schedule, Forms XIII and XIV, for the passage from comply where it occurs for the second time to returned, substitute be lawfully ordered to be released.

For section 29 substitute the following:

29. (1) The Governor General in Council
Removal of prisoner. may, by general or special order,

provide for the removal of any prisoner confined in a prison—

(a) under sentence of death, or

(b) under, or in lieu of, a sentence of imprisonment or transportation, or

(c) in default of payment of a fine, or

(d) in default of giving security for keeping the peace or for maintaining good behaviour,

1900

LII The Prisoners Act, 1900.

to any other prison in British India.

(2) The Local Government, and (subject to its orders and under its control) the Inspector-General of Prisons may, in like manner, provide for the removal of any prisoner confined as aforesaid, in a prison in the Province to any other prison in the Province.

Part III.—Bengal Acts.

1862	VI	Rent	In section 14, for the said Act substitute Act X of 1859, and for section VII of Act I of 1846 substitute section 27 of the Legal Practitioner's Act, 1879.
1865	VII	Slaughter-houses and Meat-markets.	In section 1, for the jurisdiction of the Municipal Commissioners of the Suburbs of the Town of Calcutta appointed under the provisions of Act III of 1864 passed by the Lieutenant-Governor of Bengal in Council (the District Municipal Improvement Act), substitute any limits to which this section has heretofore been or may hereafter be, extended by notification under section 9.
1866	IV	The Calcutta Police Act, 1866.	In section 25, for such officer substitute officer of the Police Force. In section 33, for the Articles of War for Her Majesty's Army or Her Majesty's Navy or for the native officers or soldiers in Her Majesty's Indian Army, substitute the Naval Discipline Act, the Army Act or the Indian Articles of War. In section 95, for the words this Act, in the second place in which they occur, substitute sections 64 and 67 to 70 of the Indian Penal Code and sections 386, 387 and 389 of the Code of Criminal Procedure, 1893.
1867	IV	Rent (Appeals).	In section 5, for the said recited Acts substitute the Bengal Rent Act, 1859, or the Bengal Rent Act, 1862.
1869	I	Cruelty to Animals	In section 9, for the said Act II of 1866 substitute Ben. Act II of 1866.
1876	III	The Bengal Irrigation Act, 1873.	In section 95, for as a demand under section 1 of the aforesaid Ben. Act VII of 1868 substitute under the procedure provided by the Public Demands Recovery Act, 1895, for the recovery of public demands.

1880	IX	The Cess Act, 1880	In section 29, Example B, for rate substitute ratio.
1884	II	Amendment of the Calcutta Tramways Act, 1880.	In the preamble, for the words and figures situate within the local limits of the town as defined in the Calcutta Municipal Consolidation Act, 1876, substitute subject to the authority of the Corporation of Calcutta.
			In section 3, for the words and figures in Calcutta but situate beyond the local limits of the town as defined in the Calcutta Municipal Consolidation Act, 1876, substitute in those portions of Calcutta, as defined in the Calcutta Municipal Act, 1898, which are not subject to the authority of the Corporation of Calcutta, and for the words and figures within the local limits of the town as defined by the Calcutta Municipal Consolidation Act, 1876, substitute within the area subject to their authority.
			In section 4, for the words and figures outside the limits of the town as defined by the Calcutta Municipal Consolidation Act, 1876, substitute outside the area subject to their authority.
1885	III	The Bengal Local Self-Government Act of 1885.	In section 45, for such district substitute any district in which this Act is in force.
			In the reference to section 9 of Bengal Act IX of 1880 in the second Schedule for 111 substitute 109.
1887	IV	The Chittagong Port Commissioners Act, 1887.	In section 39, clause (b), for 32 substitute 34.
1890	II	Vaccination (amending Bengal Act V of 1880).	In sections 2 and 3, after Suburbs insert of Calcutta.
"	III	The Calcutta Port Act, 1890.	In section 30, for the three next succeeding sections, and in section 31 for any of the three last preceding sections, substitute section 31, section 32 or section 33.
			In section 94, for vessels substitute vessel.
1894	IV	Municipalities.	In section 34, for Municipality substitute Municipalities.
1899	I	The Bengal General Clauses Act, 1899.	In section 8, clause (G), after under insert the Indian Councils Act, 1861, or.
			In section 25, before the word orders wherever it occurs, insert the word, appointment, and before the word issued, wherever it occurs, insert the words made or.

Part IV.—Burma Act.

1898	The Burma General Clauses Act, 1898.	In section 20, before the word order, in each of the places in which it occurs, insert notification. In section 21, for make substitute issue notifications, between the words any and orders insert notifications, and for made substitute issued. In section 24, before the word order in each of the places in which it occurs, insert appointment, notification; and before the word issued, in each of the places in which it occurs, insert made or.
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Part V.—Regulation made under the Government of India Act, 1870 (33 & 34 Vict.).

1885	IX The Arakan Hill District Laws Regulation 1874.	In the first column of the schedule for II of 1857 substitute XI of 1857.
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THE THIRD SCHEDULE.

REPEALS.

(See Section 4)

Part I.—Regulations of the Bengal Code.

1	2	3	4
Year.	No.	Subject or short title.	Extent of repeal.
1893	VII	The Bengal Decennial Settlement Regulation, 1793.	In section 19, the words and figures as the mukarraridars mentioned in section XVIII are supposed to have done. In Section 38. In section 68, the words or the Courts of Circuit.
"	XIX	Revenue-free Lands (Non-Bādshāhī Grants).	Sections 25 and 35.
"	XXXVII	Revenue-free Lands (Bādshāhī Grants).	In section 2 clause Second, the words and figures and proceeded in it as required by section XIV, Regulation III, 1793.
"	XXXVIII	The Indian Civil Service (Bengal) Rules Prohibition Regulation, 1793.	Sections 20 and 30. In section 2, the words have been made in opposition to the repeated prohibitions of Government, or which.

1794	III Native Revenue officers.	In the title, the words money or and the words embezzle or. In section 16, the words a balance of accounts, or money or, the words the payment of the money or, the words the amount of the money or, the words money or, the words discharge the money or, the words the sum demanded of him shall be discharged or, and the words from The Collector is authorized likewise to attach to arrears of revenue. In section 17, the words money or. In section 18, the words money or, the words balance or, and the words that no part, or a portion only, of the sum demanded was due from him, or. Section 19. In section 20, the words and figures and shall not obtain his release in the mode specified in section 19, and the word nevertheless.
1799	V The Bengal Wills and Intestacy Regulation, 1799.	In section 2, the words under any Regulation relative to the jurisdiction of the Court of Wills. In section 3, the words when they are to proceed thereupon according to the general Regulation. In section 7, the words or, if the deceased were an European, in the Calcutta Gazette.
1801	I Land-revenue Assessment.	In section 8, the words and figures from and the patwari accounts furnished in pursuance of clause fourth of section LXII, Regulation VIII, 1793, to procurable by the officers of Government the words and figures in pursuance of clause fourth of section LXII, Regulation VIII, 1793, or of any other Regulation the words under the process prescribed in clause eighth of the above section and Regulation, and the words and figures from. Moreover, nothing in this Regulation is meant to supersede the Rules contained in section LXII, Regulation VIII, 1793, to the end of the section. In section 10, the words Governor General in Council or.
1805	XII Land-revenue, Cuttack.	In section 1, the words from And whereas the principles to confirmed. section 2 to 11.

1805	XIII	Police, Cuttack.	In section 31, the words and figures from and the rules contained in Regulation XXVII, 1793, to the end. In the title, the words and figures and for amending certain provisions contained in Regulation IV, 1804. In section 1, the words from And whereas it was the practice to general tranquillity of the country. In section 4, clause Third, in section 4, clause Fourth, the words and third. Sections 5, 6, 7, 10 and 11.
1810	XIX	Charitable Endowments, Buildings and Escheats. Public	In the title, the words mosques, Hindu temples and the words bridges, serais, kattas and other. In section 1, the words mosques, Hindu temples, the words pious and and the words bridges, serais, kattas and other. In section 2, the words mosques, Hindu temples, the words pious and and the words and Board of Commissioners in the several districts subject to the control of those Boards respectively. In sections 3, 5, 6 and 8, the words and Board of Commissioners. In section 7, the words and Board of Commissioners, respectively. In section 10, the words to whose authority those agents are respectively subject. In section 14, the words or Board of Commissioners. In section 15, the words in the mode and form prescribed by the Regulations, where Government or public officers are parties, or under the general provisions of the Regulations, if the suit be brought against a competitor or other private person. In section 26, the words and City. In section 27, the words or City. In section 1, the words and Benares. So much as is unrepealed.
1812	V	Land-Revenue Sales	In section 3, the words with sanction of the Governor General in Council.
"	XVIII	Leases and Land-revenue.	In section 10, the words by the Regulations.
"	XXIX	Territories bordering on Bhand.	In the title, the words in the Ceded and Conquered Provinces, the Provinces of Behar and Benares the districts of Cuttack, the pargana of Pataspur and its dependencies.
1814	V	Ghatwāli Lands	
1816	XXII	Kānūngos	
1817	XII	Patwāris	

			In section 1, the words from but, as for the full attainment to organization of that office, and the words from to be in force to dependents on it.
			In section 23, the words City or.
			In section 27 and 29, the words in like manner.
			In section 30, the words Provided further that.
1848	III	The Bengal State Prisoners Regulation, 1818.	In section 4, the words or City, wherever they occur.
1819	I	Kánungos and Patwáris	In section 4, clause Sixth, the words and Sylhet.
"	II	Land-revenue Assessment (Returned Lands).	In section 5, clause First, the words and fifty bighas if within the Province of Benares.
"	VIII	The Bengal Patni Taluqs Regulation, 1819.	In section 17, clause Eighth, the words as shown by the Government Gazette last received.
1820	I	The Bengal Patni Taluqs Regulation, 1820.	In section 2, the words or City.
1822	VII	Land-revenue Settlement.	In the title, the words the Ceded and Conquered Provinces including. In section 1, the words the district of Gorakhpur, the chakla of Asamgarh, the words and whereas it is also advisable to provide for the the revision of the settlement of the Conquered Provinces and of the Province of Bundelkhand, pending the continuance of the existing leases, and the words from the date of their promulgation throughout the Ceded and Conquered Provinces. Section 5, clause First, and section 6, clause Fourth. In section 7, clause First, the words in the Ceded Provinces or. Section 7, clause Fourth. In section 7, clause Sixth, the words the district of Gorakhpur, the chakla Asamgarh. In section 29, clause First, the words but no petition of appeal shall be received after the expiration of three months from the date of the decision unless sufficient cause shall be shown for the delay to the satisfaction of the Board, and the words Provided also that, in both places in which they occur. In section 31, clause Second, the words Provided also that. [City. In section 33, clause First, the word In section 35, the words or Board of Commissioners.

1822	XI	Government Indemnity.	Section 2.
1823	VI	Indigo Contracts	In section 4, clause <i>Second</i> , the words by the existing Regulation.
"	VII	The Indian Civil Service (Bengal) Loans Prohibition Regulation 1823.	In section 6, the words In like manner.
1825	VI	The Bengal Troops Transport Regulation, 1825.	Section 7. In section 2, the word <i>Sicca</i> . In section 4, the words in whose jurisdiction the district may be situate. In section 5, the word proper and the words by whom the case may be cognisable.
"	IX	Land-revenue Settlement	In section 5, clause <i>Tenth</i> , the words, under the provisions of the existing Regulations.
"	XI	The Bengal Alluvion and Diluvion Regulation, 1825.	In section 5, the words and City.
"	XIV	Revenue-free Lands	In the title, the words and figures and to provide for the due application of the general laws and regulations respecting lands held free of assessment to the territory ceded by Govind Rao to the British Government and annexed to the sile of Bundelkhand under the provisions of Regulation II, 1818. In section I, the words and figures and it is necessary to make provision for the due application of the general rules in force relative to lakhiraj tenures to the territory ceded by Govind Rao to the British Government and annexed to the sile of Bundelkhand under the provisions of Regulation II, 1818, the words a special appeal only shall lie in the Provincial Courts, and that in like manner in cases decided in the first instance by a Provincial Court, excepting cases ultimately appealable to the King in Council, the words on special grounds only, the words the above restriction should not apply to, the words but that such cases, and the words and figures Regulations XLI and XLII, 1793, Regulations XXXI and XXXVI, 1808. In section 2, the words the Lieutenant-Governor and the Board of Commissioners in the Ceded and Conquered Provinces. In section 3, clause <i>Second</i> , the words and figures from the 1st July, 1775, to 1st November, 1817.

			In section 3, clause <i>Fifth</i> , the words <i>and figures</i> Regulation XLII, 1795, Regulation XXXVI, 1803, and <i>and the words and figures</i> from and with respect to the territory to territory referred to.
			In section 3, clause <i>Seventh</i> , the words <i>and figures</i> from for Benares to 1st January, 1803, and the words <i>and figures</i> from for the pargana to 1st November, 1817.
			In section 4, the words <i>and figures</i> Regulation XLI, 1795, Regulation XXXI, 1803.
1827	V	The Bengal Attached Estates Management Regulation, 1827.	In section 2 the words <i>and figures</i> and clauses five and six section XVI, Regulation III, 1803.
1828	III	Land-revenue Assessment (Resumed Lands).	In the title, the words <i>from the ap-</i> pointment to for otherwi-e. In section 1, the words <i>and figures</i> from By the provisions of Regulation II, 1819, to <i>To remedy the</i> <i>foreaid evils, and the words</i> from to appoint special Commissioners to relative to such cases; and. Sections 2 to 8. In section 10, clause <i>Second</i> , the words whether the same be situated in districts to which the jurisdiction of a special Commissioner has been extended or in any other district, <i>and the words</i> or to the Commissioner appointed under this Regulation. In section 12, the words <i>and figures</i> Regulations XLI and XLII, 1795, Regulations XXXI and XXXVI, 1803, Regulations VIII. In section 13, clause <i>First</i> , the words or before a special Commissioner under this Regulation. In section 18, clause <i>Second</i> , the words to a special Commissioner under this Regulation having local jurisdiction for the time being (or, if no such jurisdiction exist). Section 1. In section 2, clause <i>Fourth</i> , the words by this Regulation and. In the title, the words <i>and figures</i> from for establishing to the end. In section 1, the words now vested in the Courts of Oronia, together with those, the words the former under the authority of the Nizam Adalat, and the latter; the words and altogether to disjoin the functions the Courts of Oronia
	IV	Land-revenue Settlement	
1829	I	Revenue Commissioners	

			from those of the Judges of Appeal; and the words and figures from It has, at the same time, appeared to be necessary to superseded by the appointment of Commissioners.
			In section 2, the figures and words from 1st Division to Ghazipur, the words To be placed under the officer appointed to control the affairs of Arakan, and the figures and words from 17th to Rungpore. Sections 6 to 8, section 9, clause First and section 10.
1833	IV	Convict Labourers	The whole.
"	IX	Land-revenue (Settlement and Deputy Collectors).	In the title, and in section 1, the words and figures and Regulation IV of 1828.
			Section 2 and the first sentence of section 3.
			In section 8, [24 and 25, the word Sadr.

Part II.—Acts of the Governor General in Council:

1836	XIX	Districts.	The words and to alter the limits of existing zilas.
			The whole Act, so far as it applies to the United Provinces of Agra and Oudh.
1837	VI	Land-revenue Settlement, Outack.	So much as is unrepealed.
1847	IX	Alluvion and Duluion.	In section 4, the word Government.
			In sections 5 and 6, the word Sadr, where it occurs before the word Board.
			In section 9, the words Except as regards the proprietary right to islands.
1850	XXXII	The Sale of Patni-tenures Act, 1850.	So much as is unrepealed.
1853	XIX	The Recusant Witnesses Act, 1853.	So much as is unrepealed, except so far as it is in force in Assam.
1854	XX	Amendment of Berghal Regulation XIII of 1833 (Administration of parts of the Bahgarh Jungle Mahals and Midnapur districts).	The whole.
"	XXVI	Education of male minors subject to Court of Wards.	The whole.
1855	XXXII	Embankments.	In section 21, the words from words importing the singular to females.
1856	XXII	Karatoyá Tolls	In section 4, the words or other officer exercising the powers of a Magistrate
1857	XXI	Offences, Howrah	In section 51 the words from The provisions to Provided that.
			Section 55.
			In section 57, the words Suburbs or, in both places in which they occur.

1858	XXXI	Alluvial Land Settlement	In section 59, the words from words importing the singular to females.
1859	X	Bent	Section 3. In sections 3 and 15, the words and Benares. In section 28, the words and figures section X, Regulation XLI. 1795, section VI, Regulation XXXI, 1803, section XXI, Regulation VII, 1805, and the words from if such period to the end. Section 29, the second paragraph. In section 32, the words from For arrears to first expire. In section 38, the words from or, in the case to first expire, and the words (except the case of claims now existing as aforesaid). In section 168, the words Except as provided in the last preceding section. [to females. In section 168, the words from Unless In section 18, proviso, the words and it is hereby enacted. In section 22, the words notes or. Schedule B.
	XI	Land-revenue Sales	
1867	XXXII	The Chief Commissioners' Powers Act.	In the preamble, the words and British Burma. In section 1, the words or British Burma. So much as is unrepealed.
1869	XVI	The Bhutan Duars Act, 1869.	Section 5.
1870	XXVII	The Indian Penal Code Amendment Act, 1870.	Section 5.
1871	XIX	The Bengal Sessions Courts Act, 1871.	So much as is unrepealed.
1873	XIV	The Lunatic Soldiers' Property Act, 1873.	So much as is unrepealed.
1874	XV	The Laws Local Extent Act, 1874.	So much of sections 6 and 7 and the fourth and fifth Schedules as relates to Act XIX of 1858 (<i>Rescued Witnesses</i>). So much of section 7 and the fifth Schedule as relates to Act XXI of 1838 (<i>Creating Zilas</i>). So much of section 3 and the second Schedule as relates to Act XIX of 1858 (<i>Rescued Witnesses</i>).
1876	XVIII	The Oudh Laws Act, 1876.	In section 3, the words and has been ordered to be forwarded to any one of the Presidency towns.
1877	XI	The Military Lunatics Act, 1877.	Section 8.
1873	XI	Laws, Punjab (Amending Act IV of 1872).	The whole.
1880	IV	The Portuguese Treaty Act, 1880.	In section 1, the words and shall come into force on the passing thereof.
1881	X	The Coroners Act, 1881.	The whole.
	XVII	The Portuguese Convention Act, 1831.	
1882	XVII	The Burma Steam-boilers and Prime-movers Act, 1882.	In section 18, the word thrice and the word last.

1885	IX	The excise and Sea Customs Law Amendment Act, 1885.	So much of section 4 as is unrepealed the whole.
1886	XV	Land-revenue, United Provinces (Amending Act XIX of 1873).	
1887	IV	The Indian Museum Act, 1887.	Section 4.
1888	X	The Presidency Small Cause Courts Law Amendment Act, 1888.	In the title and preamble, the words <i>and figures</i> and the Presidency Small Cause Courts Act, 1882. Section 2 and the second Schedule.
1890	XVII	The Indian Census Act, 1890.	The whole.
1891	XII	The Repealing and Amending Act, 1891.	In the title, the words to repeal certain obsolete enactments and <i>and the word other</i> . In the preamble, the words from <i>Whereas it is expedient to repeal</i> <i>ed, And, and the word also.</i> [and. In section 1, the words Repealing Section 2, subsection (1). So much of section 2, subsection (2), and the second Schedule, Part, as relates to the following enactments, namely:— Act V of 1849 (Indian Articles of War), Part I, clause (c); Act XVII of 1876 Oudh Land-revenue Act, 1876; and Act XII of 1881. Section 3 and the first Schedule.
1892	IV	The Court of Wards Act (Bengal) Amendment Act, 1892.	In section 1, the word <i>and</i> , and subsection (2).
1893	II	The Porahat Estate Act, 1893.	In section 1, the word <i>and</i> and subsection (2).
"	XI	The Tributary Mahals of Orissa Act, 1893.	In the preamble the words to repeal certain enactments relating to the Tributary Mahals of Orissa and. In section 1, the word <i>and</i> , and subsection (3). Section 2 and the Schedule.
1894	IV	The Repealing and Amending Act, 1894.	In the title, the words to repeal certain obsolete enactments and <i>and the word other</i> . In the preamble, the words from <i>Whereas it is expedient to, repeal</i> <i>ed; And, and the word also.</i> In section 1, the words Repealing and. Section 2, subsection (1), section 3 and the first Schedule.
"	XIII	The Repealing and Amending (Army) Act, 1894.	In section 1, the words Repealing and. Section 2, subsection (1), and the first Schedule.
"	XVI	Tariff (Amending Act VIII of 1894).	The whole.
1895	I	The Presidency Small Cause Courts Act, 1895.	Section 4.
"	XVI	The Repealing and Amending Act, 1895.	In the title, the words to repeal certain obsolete enactments and, <i>and the word other</i> .

			In the preamble, <i>the words from</i> Whereas it is expedient to repealed; And, <i>and the word also.</i> In section 1, <i>the words</i> Repealing and. Section 2, sub-section (1), section 3 and the first Schedule. So much of the second Schedule as relates to Bombay Act IV of 1882.
1796	VII	The Presidency Small Cause Courts Act (1882) Amendment Act, 1896.	The whole.
"	XIV	Repealing part of the Government Tenants (Punjab) Act, 1893.	The whole.
1897	II	The Criminal Tribes Act Amendment Act, 1897.	In section 1, <i>the word</i> and <i>and</i> sub- section (2).
"	V	The Repealing and Amendment Act, 1897.	In the title, <i>the words</i> to repeal cer- tain obsolete enactments and <i>and</i> <i>the word</i> other. In the preamble, <i>the words from</i> Whereas it is expedient to specifi- cally repealed; And, <i>and the word</i> <i>also where it first occurs.</i> In section 1, <i>the words</i> Repealing and. Section 2, sub-section (1), section 3 and the first Schedule. Section 2 and the schedule.
"	X	The General Clauses Act, 1897.	The whole.
"	XI	The Bhopal Coinage Act, 1897.	Section 19.
1898	III	The Lepers Act, 1898.	In the preamble, <i>the word</i> repeal. Section 18 and the fifth Schedule.
"	XIII	The Buama Laws Act, 1898.	Section 31.
1900	III	The Prisoners Act, 1900.	The whole.
1901	I	Native Military Lunatics (repeal of enactments).	In the preamble, <i>the words from</i> And whereas it is also expedient that certain enactments to repealed. In section 1, <i>the words</i> Repealing and. Section 3, sub-section (2), section 4 and the third Schedule.
"	XI	The Repealing and Amending Act, 1901.	

Part III.—Bengal Act.

1862	III	Land-revenue Sales	In the preamble, <i>the word</i> under <i>where</i> <i>it first occurs, and the words</i> and <i>farms, where they first occur.</i> In section 2, the first two paragraphs. Section 1.
"	VII	Rent	In section 2, 3, 12, 14 and 16, <i>the</i> <i>words</i> hereafter to be brought. In section 8, <i>the words</i> instituted after the passing of this Act. In section 13, <i>the words and figures</i> So much of section LXXI of Act X of 1859 as directs that no fee for any agent shall be charged as part of the costs of suit in any case under the Act is hereby repealed.

1865	VIII	Rent Recovery (Under-tenures).	In section 1, the second sentence.
1866	II	Calcutta Suburban Police	section 31. In section 51, the words from words importing the singular to females. Section 52.
"	III	Bengal Legislative Council (Witnesses).	In section 6, the words from words importing the singular to feminine.
"	IV	The Calcutta Police Act, 1836.	In section 3, the words from words importing the singular to female. In section 77, the words and figures or with any of the offences numbered 1, 2, 3, 4, 5, 6, 7, 9, 10, 11, 12, 13, 14, 20, 21, 22, 23, 24 and 25 in section 28 of this Act. Form B in the Schedule.
"	VII	Embankments	In section 10, the words from words in the singular to females.
1867	II	Public Gambling.	In section 1, the words from words importing the masculine to the end. In section 14, the words and figures from The provisions to shall apply to the words and penalties; the words in any town or place other than the town of Calcutta; and such fines, and the words and figures from And the provisions to the end. In section 16, the words from and after the passing of this Act, in both places in which they occur. Section 17.
"	III	Ports	In section 1, the words words importing the singular number include the plural, and the words importing the plural number include the singular. In section 15, the words and hospital port-dues, and the word respectively. In section 17, the words from and the provisions, where they first occur, to the end. In the third Schedule, the figures 11 and the words from Hospital port-dues to the end.
"	IV	Rents (Appeals)	The title and preamble. Section 2, 3 and 4. In section 5, the words From and after the passing of this Act.
"	X	Land-revenue Settlement, Outtaok.	The whole.
1868	VII	Land-Revenue Sales.	In sections 3 and 4, the words From the date when this Act comes into operation. In section 3, the words from and the words to the end. Section 9 and Schedules A, B, C and D.

1869	V	Place of sitting of Courts of Session.	The whole.
	VII	Police	Section 1.
1871	IV	The Puri Lodging-house Act, 1871.	In section 3, <i>the words</i> From and after the passing of this Act.
			In section 7, <i>the words</i> After the passing of this Act.
			Section 39.
"	VII	Calcutta Port Improvement (Amending Ben. Act V of 1870).	The whole.
"	XI	Census.	The whole.
1874	I	Calcutta Suburban Police	So much as is unrepeatd.
1875	IV	Relaxation of famine loans	The whole.
"	V	The Bengal Survey Act, 1875.	In section 1, <i>the words</i> from and shall to General.
1876	III	The Bengal Irrigation Act, 1876.	Section 2 and Schedule A.
"	VI	The Agrarian Disputes Act, 1876.	The whole.
"	VII	The Land Registration Act, 1876.	In section 1, <i>the words</i> from and it shall to the end
			Section 2 and the Schedule.
1878	V	Land Registration	Section 2.
"	VII	The Bengal Excise Act, 1878.	The concluding paragraph of section 3
			In section 51, <i>the words</i> except in the town of Calcutta, and the words and figures and, in the said town, the provisions of sections 164, 165 and 166 of the Presidency Magistrates' Act.
1879	I	The Chota Nagpur Landlord and Tenant Procedure Act.	In section 1, <i>the words</i> and the Tributary Mahals, and the words from And it shall to the end.
			Sections 3 and 4.
			In section 150, <i>the words and figures</i> or of Bengal Act VI of 1876.
	II	Puri Lodging houses.	Schedule A.
			In the preamble, <i>the words and figures</i> to places other than those specified in section 39 of the said Act.
"	III	Steam-boilers and Prime-movers.	Section 1.
			In the title and preamble, <i>the words</i> in the town and suburbs of Calcutta and in Howrah.
			In section 1, <i>the words</i> from and it shall to General.
			In section 12, <i>the words</i> from No charge shall to Calcutta Gazette and.
"	VI	The Darjeeling Steam Tramway Act.	In section 1, <i>the words</i> from And it shall to the end.
	VIII	Rent Settlement	In section 1 <i>the words</i> from and it shall to the end.
			Section 2.
			In section 4, <i>the words and figures</i> of in sections 14, 15 and 18 of Bengal Act VIII of 1869.

1879	IX	The Court of Wards Act, 1879.	In section 2, the words and figures from And all suits to the end.
1880	I	The Calcutta Tramways Act, 1880.	In section 1, the words from and it shall to the end.
"	VI	The Bengal Drainage Act, 1880.	In section 1, the words from and it shall to the end.
"	VIII	The Bengal Contagious Diseases (Animals) Act, 1880.	Sections 60 to 68.
"	IX	The Cess Act, 1880	In section 1, the words from and it shall to the end.
1881	V	The Calcutta Burial Boards Act, 1881.	In section 1, the words from and it shall to the end.
1882	II	The Bengal Embankment Act, 1882.	In section 1, the words from And is shall to the end. In section 2, the words From such day. In section 46, the words after the commencement of this Act.
1883	I	Excise.	Section 18.
"	II	The Bengal Tramways Act, 1883.	In section 1, the words from It shall to the end.
1884	I	Puri Lodging-houses	Section 1.
"	II	Amendment of the Calcutta Tramways Act, 1880.	In section 1, the words from And it shall to the end.
"	III	The Bengal Municipal Act, 1884.	Section 2. In section 1, the words from But any notification to the end. In section 2, the words On the Commencement of this Act, and the words And, all proceedings now pending, which may have been commenced under any such enactment, shall be deemed to be commenced under this Act.
"	V	Calcutta Municipality.	The whole.
1886	I	Village Chaudkars	In section 1, the words from from the date to the end.
"	II	Calcutta and Suburban Police.	Section 1.
"	III	Municipalities	Section 1.
1887	I	The Calcutta Survey Act, 1887.	In section 1, the words from and shall to General.
"	V	The Chota Nagpur Rural Police Act, 1887.	In section 1, the words from and shall to General. In section 38, the words and figures from Act VIII to repealed and.
1888	I	Municipalities	The whole.
"	III	The Howrah Bridge Act Amendment Act, 1888.	In section 2, the words from and it shall to the end.
1889	III	Loan by Calcutta Port Commissioners to Calcutta Corporation.	The whole.
"	IV	Calcutta Burial Boards	Section 1.
1890	I	Calcutta and Suburban Police (Superannuation Fund).	Section 1 and 3.
"	II	Vaccination (Amending Bengal Act, V of 1880.)	Section 1. Section 4, sub-section (3).
1891	II	The Calcutta Hackney Carriage Act, 1891.	Section 1, sub-section (2).

1892	I	Village Chaukidars	Section 2, sub-section (1), and sections 6 and 12.
1893	I	The Licensed Warehouse and Fire brigade Act, 1893.	Section 1, sub-section (3). In section 4, the words <i>From and after the commencement of this Act.</i> In section 27, the words <i>and figures</i> or at the credit of any fund appropriated to the maintenance of the fire-brigade under the provisions of Act IV of 1883 at the time when this Act comes into force.
1894	I	The Licensed Warehouse and Fire-brigade Amendment Act, 1894.	In section 1 the words <i>from and shall to the end.</i> Section 4 and 5.
"	II	Calcutta Port	Section 1.
"	III	The Calcutta Tramways Act, 1894.	In section 1, the words <i>from and it shall to the end.</i>
"	IV	Municipalities	In section 1, the words <i>from and it shall to the end.</i>
"	VI	Municipalities	Section 5, 9, 46, 51, 77, 83 and 89. The whole,
1895	I	The Public Demands Recovery Act, 1895.	Section 1, sub-section (3). Section 1.
"	II	Calcutta and Suburban Police.	Section 1, sub-section (2), and sections 4, 6, 14 and 16.
"	IV	Calcutta Port	Section 1, sub-section (2).
"	VI	Calcutta Port	In section 2, the words <i>and figures</i> as amended by section 4 of Act IV (B, C.) of 1895. In section 5, the words <i>and figures</i> as amended by section 14 of Act V of 1895 (B, C.) In section 6, the words <i>and figures</i> as amended by section 16 of Act IV, of 1895 (B, C.)
"	VII	The Ratan Durs Repealing Act, 1895.	The whole.
"	VIII	The Bengal Sanitary Drainage Act, 1895.	Section 1, sub-section (3).
"	IX	The Calcutta Electric Lighting Act, 1895.	Section 1, sub-section (2).
1896	II	Municipalities	Section 1, section 9, sub-section (4), and section 19.
1897	I	Public Demands Recovery	Section 1 and 3.
"	IV	The Chota Nagpur Commutation Act, 1897.	Section 2.
1898	I	The Calcutta Police Act, 1898.	In Section 1, the word <i>and</i> , and sub-section (2).
"	II	The Calcutta Port (Amendment) Act, 1898.	In section 1, the word <i>and</i> and sub-section (2).
"	III	The Bengal Tenancy (Amendment) Act, 1898.	In section 1, the words <i>and</i> , and sub-section (2).
1899	I	The Bengal General Clause Act, 1899.	Section 11.
"	III	The Calcutta Municipal Act, 1899.	In section 1, the words <i>and figures</i> and (3) It shall come into force on the first day of April 1900.

			The proviso to section 1. In section 2, the words and figures On and from the said first day of April, 1900. Section 60, sub-section (1). In the preamble, the words and to provide for the temporary exer- cise by the Local Government of certain powers of the Commis- sioners of the Darjeeling Muni- cipality. Section 28. Part II (sections 24 to 28). Schedules E, F and G.
1900	I	The Darjeeling Municipal Act, 1900.	
	II	The Calcutta Municipal Act, 1900,	The whole.

Part IV.—Madras Acts.

1880	II	Repealing Madras Act III of 1863.	The whole.
1881	II	Repealing Madras Act I of 1868.	The whole.
1882	II	Repealing Madras Regulation XIV of 1886.	The whole.

Part V.—Bombay Acts.

1872	I	Police, Bombay Town	So much as is unrepealed.
1879	I	District Municipalities.	So far as it is unrepealed.
	II	Police, Bombay Town.	The whole.
1882	IV	Police, Bombay Town.	The whole.
1885	IV	Local Boards and District Municipalities.	In the title, the words and figures and the Bombay District Municipal Act Amendment Act, 1884. Section 5 and the preamble prefixed thereto.
1888	I	Local Boards and District Municipalities.	In the title and preamble, the words and figures and the Bombay Dis- trict Municipal Act Amendment Act, 1884. In section 1, the words and figures and to section 18 of the Bombay District Municipal Act Amendment Act, 1884.
1892	III	The Bombay Abkari Act, Amend- ment Act, 1892.	Section 5.

Part VI.—United Provinces Act.

894	I	Repealing the Tarai Regulation, 1876.	The whole.
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Part VII.—Regulations made under the Government of India Act, 1870 (33 & 34 Vict. c. 3).

1871	I	Peshawar District Limitation Re- gulation, 1871.	The whole.
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	III	The Sonthal Parganas Settlement Regulation.	So much of section 3, sub-section (I), and the Schedule (as amended by section 3 of the Sonthal Parganas Justice and Laws Regulation, 1899) as relates to the following enactments, namely:— Act XXXVIII of 1850 (The Sale of Patni Tenures Act, 1850); Act XV of 1869 (The Prisoners' Testimony Act 1869); Act I of 1882 (The Assam Labour and Emigration Act, 1882); Act X of 1882 (The Prisoners Amendment Act, 1882); Act V of 1888 (The Inventions and Designs Act, 1888), section 2; Act VII of 1893 (The Inland Emigration Act, 1893); Act VII of 1894 [The Prisoners Act, (1871) Amendment Act, 1894]; Bengal Act I of 1889 (The Inland Emigrants' Health Act, 1889); Bengal Act VI of 1894 (Municipalities); Bengal Act V of 1895 (The Lopers Act, 1895); and Regulation III of 1886 (The Sonthal Parganas Laws Regulation, 1886).
1872			In section 25, <i>the words</i> if any suit affecting such rights be pending at the time when this Regulation shall come into operation, <i>or</i> .
1873	V	Bengal Eastern Frontier Regulation, 1873.	In the preamble, <i>the words</i> and Chittagong Hills.
1874	IX	The Arakan Hill District Laws Regulation, 1874.	So much of section 3 and the Schedule as relates to Act XXXIV of 1855 (Enforcement of judgments of Charter Courts) and Act XXXII of 1867 (The Chief Commissioner's Powers' Act).
1881	III	The Chittagong Hill Tracts Frontier Police Regulation, 1881.	In section 1, <i>the words from</i> and it shall <i>to the end</i> .
1886	II	The Sonthal Parganas Rent Regulation, 1886.	The preamble to made and. Section 1, sub-section (2), and section 5. In section 22, sub-section (1), <i>the words, and figures under</i> Bengal Act VII of 1880.
	II	The Sonthal Parganas Laws Regulation, 1886.	So much as is unrepealed.
	VII	The Upper Burma Criminal Justice Regulation, 1886.	So much as is unrepealed.

1890	I	The British Baluchistan Laws Regulation, 1890.	So much of section 3, sub-section (1), and the Schedule as relates to Act XIV of 1873 (Lunatic Soldiers), The whole.
1893	VI	Criminal Justice, Upper Burma.	
	V	The Sonthal Parganas Justice Regulation, 1893.	Section 2.
"	IX	The Ajmer Repealing and Amending Regulation, 1893.	In the title, <i>the words</i> to repeal certain obsolete enactments and, <i>and the word</i> other. In the preamble, <i>the words from</i> Whereas it is expedient to repeal; <i>And and the word</i> also. In section I, <i>the words</i> Repealing and, Section 2, sub-section (1), section 3, and the first Schedule.
1894	I	The Angul District Regulation, 1894.	So much of section 3, sub-section (1) and the schedule as relates to the following Acts, namely:— Act XIV of 1866 (Post Office); Act I of 1868 (General Clauses); Act XV of 1869 (Prisoners Testimony); Act X of 1870 (Land Acquisition); Act XXVI of 1870 (Prisons); Act I of 1879 (Stamps); Act X of 1882 (Criminal Procedure); Act XVIII of 1883 (Cattle-trespass); Act I of 1887 (General Clauses); So much of section 3, sub-section (1), and the schedule as relates to the following Acts, namely:— Act XII of 1880 (Tariff); Bengal Act II of 1864 (Jails); and Bengal Act V of 1867 (General Clauses). In section 3, sub-section (2), <i>the words</i> or to have been, <i>the words</i> shall have been expressly extended thereto or, <i>and the word</i> so. Section 8, sub-section (2), proviso. In column I of Part II of the schedule, in the entry relating to Act X of 1873 (Oaths), <i>the words and figures</i> (except the first sentence of section (16)).
1899	III	The Sonthal Parganas Justice and Laws Regulation, 1899.	In section I, <i>the word</i> and <i>and</i> sub-section (2).
1900	I	The Chittagong Hill-tracts Regulation, 1900.	Section 20.
"	III	The Sonthal Parganas Rural Police Regulation, 1900.	In section I, <i>the words and figure</i> and (3) it shall come into force at once.
1901	VII	The North-West Frontier Province Law and Justice Regulation, 1901.	So much of Part I of the first Schedule as relates to section 31 of the Prisoners Act, 1900.

ACT No. II OF 1903.

RECEIVED THE ASSENT OF THE GOVERNOR-GENERAL, ON THE
6TH MARCH 1904.

An Act to amend the Indian Post Office Act, 1898.

WHEREAS it is expedient to amend the Indian Post Office Act, 1898; It is hereby enacted as follows:—

Short title. 1. This Act may be called the Indian Post Office (Amendment) Act 1903.

1. At the end of clause (b) of section 2 of the Indian Post Office Act, 1898, the following shall be added, namely:—
Addition to Act VI of 1898, section 2, clause (b).

“Provided that the expression ‘inland’ shall not apply to any class of postal articles which may be specified in this behalf by the Governor-General in Council by notification in the Gazette of India, when posted in or at or addressed to any places or post offices which may be described in such notification.”

ACT No. III OF 1903.

RECEIVED THE ASSENT OF THE GOVERNOR-GENERAL ON THE
13TH MARCH 1903.

An Act to make better provision for facilitating and regulating the supply and use of electrical energy for lighting and other purposes.

WHEREAS it is expedient to make better provision for facilitating and regulating the supply and use of electrical energy for lighting and other purposes; It is hereby enacted as follows:—

PART I.

PRELIMINARY.

Short title and extent. 1. (1) This Act may be called the Indian Electricity Act, 1903.

(2) It extends to the whole of British India, inclusive of British Baluchistan and the Santhal Parganas; and

(3) It shall come into force on such date as the Governor-General in Council may, by notification in the Gazette of India, direct in this behalf.

2. In this Act, expressions defined in the Indian Telegraph Act, 1885, have the meanings assigned to them in that Act, and, unless there is anything repugnant in the subject or context,—

Definitions.

(a) "aerial line" means any electric supply-line which is placed above ground and in the open air :

(b) the expression "area of supply" means the area within which alone a licensee is for the time being authorized to supply energy :

(c) "consumer" means any person supplied, or entitled to be supplied, with energy by a licensee :

(d) the expression "consumer's terminals" means the ends of the electric lines situate upon any consumer's premises and belonging to him, at which the supply of energy is delivered from the service lines :

(e) "daily fine" means a fine for each day on which an offence is continued after conviction therefor :

(f) "distributing main" means the portion of any main which is used for transmitting energy to service lines for the purposes of general supply :

(g) "electric supply-line" means a wire, conductor or other means used for conveying, transmitting or distributing energy for any purpose, together with any casing, coating, covering, tube, pipe or insulator enclosing, surrounding or supporting the same or any part thereof, or any apparatus connected therewith for the purpose of so conveying, transmitting or distributing such energy :

(h) "electrical power" means the rate per unit of time at which energy is supplied :

(i) "energy" means electrical energy expended at a rate greater than twentyfive watts :

(j) "general supply" means the general supply of energy to ordinary consumers, and includes, in the absence of a special agreement to the contrary with the Government or with a local authority, the general supply of energy for public lamps, but does not include the supply of energy to particular consumers under special agreements :

(k) "licensee" means any person licensed under Part II to supply energy :

(l) "main" means any electric supply-line which is laid by a licensee in any street and through which energy may be supplied, or is intended to be supplied, by the licensee for the purpose of general supply :

(m) "plan" includes a section :

(n) "purpose" includes any purpose except the transmission of a message :

(o) "service line" means any electric supply-line through which energy may be supplied, or is intended to be supplied, by a licensee to a consumer either from a main or directly from the licensee's premises :

(p) "street" includes any way, road, lane, square, court, alley, passage or open space, whether a thoroughfare or not, over which the public have a right of way, and also the roadway and footway over any public bridge or causeway : and

(q) the expression "works" includes electric supply-lines and any buildings, machinery or apparatus required to supply energy and to carry into effect the objects of a licensee.

PART II.

SUPPLY OF ENERGY TO THE PUBLIC.

3. (1) No person shall supply energy for electric traction or to the public for any purpose except under and in accordance with the terms and conditions of, a license granted by the Local Government under this Part :

Provided that nothing in this section shall apply to any railway or tramway subject to the provisions of the Indian Railways Act, 1890.

(2) Where any difference or dispute arises as to whether energy is or is not supplied or to be supplied for electric traction or to the public for any purpose within the meaning of sub-section (1), the matter shall be referred to the Local Government, and the decision of the Local Government thereon shall be final.

4. (1) The Local Government may grant a license to any person to supply energy for any purpose in any specified local area, and also to lay down electric supply-lines for the conveyance and transmission of energy from a generating station situated outside such specified local area to the boundary of such specified local area in any case in which the energy to be supplied is to be generated outside such specified local area; and in respect of every such license and the grant thereof the following provisions shall have effect, namely :—

(a) Before granting a license under this Part the Local Government shall consult every local authority concerned, and where such local authority advances any objection to the grant of a license, the Local Government shall take such objection into consideration and, if in its opinion it is insufficient, shall record in writing and communicate to such local authority its reasons for such opinion.

(b) Any person applying for a license under this Part shall publish a notice of his application in such manner and with such particulars as the Governor-General in Council may by rule direct, and no such license shall be granted until three months from the date of the first publication of such notice as aforesaid have expired and

until all representations or objections received by the Local Government within that period with reference thereto have been considered by it.

(c) No application for a license under this Part shall be made by any local authority except in pursuance of a resolution passed at a meeting of such authority held after one month's previous notice of the same and of the purpose thereof has been given in the manner in which notices of meetings of such local authority are usually given.

(d) A license under this Part may prescribe such terms as to the limits within which, and the conditions under which, the supply of energy is to be compulsory or permissive, and as to the limits of price to be charged in respect of the supply of energy and generally as to such other matters as the Local Government may think fit.

(e) The grant of a license under this Part for any purpose shall not in any way hinder or restrict the grant of another license to another person within the same area of supply for a like purpose.

(f) The provisions contained in the schedule shall be deemed to be incorporated with, and to form part of, every license granted under this Part, save in so far as they are expressly added to, varied or excepted by the license, and shall, subject to such additions, variations or exceptions (if any) which the Local Government, with the previous sanction of the Governor-General in Council, is hereby empowered to make, apply to the undertaking authorized by the license, and shall be binding in like manner and to the same extent as if enacted in this Act.

(g) The Local Government may, if in its opinion the public interest so requires, revoke a license, as to the whole or any part of the area of supply, in any of the following cases, namely :

(a) where the license, in the opinion of the Local Government, makes wilful and unreasonably prolonged default in doing anything required of him by or under this Act;

(b) where the licensee breaks any of the terms or conditions of his license the breach of which is expressly declared by such license to render it liable to revocation;

(c) where the licensee not being a local authority fails, within a period of six months after the date of his license or such further period as the Local Government may determine and before exercising any of the powers conferred on him thereby in relation to the execution of works, to show, to the satisfaction of the Local Government, that he is in a position fully and efficiently to discharge the duties and obligations imposed on him by his license, or fails to make the deposit or furnish the security required by his license;

(d) where the licensee is, in the opinion of the Local Government, unable, by reason of his insolvency, fully and efficiently to discharge the duties and obligations imposed on him by his license;

(e) where the licensee, not being a local authority, shows, to the satisfaction of the Local Government, at any time after the commencement of his license, that his undertaking cannot be carried on with profit and ought to be abandoned;

(f) where the licensee supplies energy by means of some system not approved by the Local Government;

(g) in any other case, with the consent of the licensee and, if the licensee is not a local authority, with that of the local authority (if any) concerned, and upon such terms and conditions as it thinks just:

Provided that the Local Government shall not revoke the license as to part only of the area of supply if the licensee represents that he desires to be relieved of his liabilities in respect of the whole.

(3) Where the Local Government might, under sub-section (2), revoke a license it may, instead of revoking the license, permit it to remain in force subject to such further terms and conditions as it thinks fit, and any further terms or conditions shall be binding upon, and be observed by the licensee, and shall be of like force and effect as if they were contained in the license.

Provision where license of licensee, not being a local authority, is revoked.

5, Where the Local Government revokes the license of any licensee, not being a local authority, as to the whole or any part of the area of supply, the following provisions shall have effect, namely:—

(a) The Local Government shall serve a notice of the revocation upon the licensee and upon any local authority concerned, and shall in the notice fix a date on which the revocation shall take effect, and on and with effect from that date all the powers and liabilities of the licensee under this Act shall absolutely cease and determine.

(b) Within one month after the service of such notice as aforesaid any local authority concerned may, if the Local Government has intimated to the local authority that it is at liberty so to do, by notice in writing, require the licensee to sell, and thereupon the licensee shall sell, to the local authority the undertaking or such part thereof as is carried on within the area for which it is constituted, on payment of the value of all lands, buildings, works, materials and plant of the licensee, suitable to, and used by him for, the purpose of the undertaking or such part thereof as aforesaid, such value to be, in case of difference or dispute, determined by arbitration:

Provided that the value of such lands, buildings, works, materials and plant

shall be deemed to be their fair market-value at the time of purchase, due regard being had to the nature and condition for the time being of such lands, buildings, works, materials and plant, and to the state of repair thereof, and to the circumstance that they are in such a position as to be ready for immediate working and to the suitability of the same for the purposes of the undertaking, and, where a part only of the undertaking is purchased, to any loss occasioned by severance but without any addition in respect of compulsory purchase or of good will or of any profits which may be or might have been made from the undertaking, or of any similar considerations.

(c) Where no purchase has been effected by a local authority under clause (b) and any other person is willing to purchase the undertaking or such part of it as aforesaid, the Local Government may, if it thinks fit, with the consent of the licensee or without the consent of the licensee in case the price is not less than that for which the local authority might have purchased the same, require the licensee to sell, and thereupon the licensee shall sell, to such other person the undertaking or such part thereof as aforesaid.

(d) Where a purchase has been effected under clause (b) or clause (c), the undertaking, or such part thereof as aforesaid, shall vest in the purchasers free from any debts, mortgages or similar obligations of the licensee or attaching to the undertaking; and the revocation of the license shall extend only to the revocation of the rights, powers, authorities, duties and obligations of the licensee from whom the undertaking, or such part thereof as aforesaid, is purchased, and, save as aforesaid, the license shall remain in full force, and the purchaser shall be deemed to be the licensee.

(e) Where no purchase has been effected under clause (b) or clause (c), the Local Government shall have the option of purchasing the undertaking, or such part thereof as aforesaid, and, if the Local Government elects to purchase, the licensee shall sell the undertaking or part thereof to the Local Government upon terms and conditions similar to those set forth in clauses (b) and (d) save that where the Local Government is the purchaser the license shall, in so far as the Local Government is concerned, cease to have any further operation.

(f) Where no purchase has been effected under any of the foregoing clauses, the Local Government may forthwith cause the works of the licensee to be removed and the street to be reinstated and recover the cost of such removal and reinstatement from the licensee.

(g) If the licensee has been required to sell the undertaking or any part thereof and if the sale has not been completed by the date fixed in the notice issued under clause (a), the purchaser may, with the previous sanction of the Local Govern-

ment, work the undertaking or such part thereof pending the completion of the sale.

6. Where the Local Government revokes the license of a local authority as to Provision where the whole or any part of the area of supply, it may forthwith license of local authority is revoked. cause the works of the licensee to be removed and the street to be reinstated, and recover the cost of such removal and reinstatement from the licensee.

7. (1) Where a license has been granted, a local authority shall, on the expiration of such period, not exceeding forty-two years and of every such subsequent period, not exceeding ten years, as shall be specified in this behalf in the license, have the option of purchasing such portion of the undertaking as is in the area for which it is constituted, and, if the local authority, with the previous sanction of the Local Government, elects to purchase, the licensee shall sell the undertaking or part thereof to it upon terms and conditions similar to those set forth in section 5, clauses (b) and (d).

(2) In any such case as aforesaid, if a local authority does not elect to purchase, the Local Government shall have the like option upon the like terms and conditions save that where the Local Government purchases the undertaking or any part thereof under such option the licensee shall, in so far as the Local Government is concerned, cease to have any further operation.

(3) Where, in exercise of the option conferred by sub-section (1), a local authority has elected to purchase the portion of the undertaking which is within the area for which it is constituted, the Local Government shall have the like option upon the like terms and conditions in respect to any portion of the undertaking which is without such area.

(4) Not less than twelve months' notice in writing of any election to purchase under this section shall be served upon the licensee by the local authority or the Local Government, as the case may be.

(5) Notwithstanding anything hereinbefore contained, the local authority may, with the previous sanction of the Local Government, waive its option of purchase and enter into an agreement with the licensee for the working by him of the undertaking, or such portion thereof as is in the area for which such authority is constituted, until the expiration of the next subsequent period referred to in sub-section (1), upon such terms and conditions as may be stated in such agreement.

8. Where, on the expiration of any of the periods referred to in section 7, sub-section (1), neither the local authority nor the Local Government purchases the undertaking or any portion thereof, and the license is, with the consent of the licensee, revoked, the Provisions where no purchase and license is revoked with consent of licensee.

licensee shall have the option of disposing of all lands, buildings, works, materials and plant belonging to the undertaking in such manner as he may think fit:

Provided that, if the licensee does not exercise such option within a period of six months, the Local Government may proceed to take action as provided in section 5, clause (f).

9. (1) The licensee shall not, at any time without the previous consent in writing, of the Local Government, acquire, by purchase or otherwise, the undertaking of, or associate himself with, any person supplying, or intending to supply, energy under any other license, and, before applying for such consent, the licensee shall give not less than one month's notice of the application to every local authority, both in the licensee's area of supply, and also in the area or district in which such other person supplies, or intends to supply, energy.

(2) The licensee shall not at any time transfer his undertaking, or any part thereof, by sale, mortgage, lease, exchange or otherwise without the previous consent in writing of the Local Government.

(3) Any agreement relating to any transaction of the nature described in subsection (1) or subsection (2) which may be made without such consent as aforesaid shall be void.

10. Notwithstanding anything in sections 5, 7 and 8, the Local Government with the previous sanction of the Governor General in Council, may, in any license granted under this Act, vary the terms upon which a licensee, shall be bound to sell his undertaking.

11. (1) Every licensee shall prepare and render to the Local Government, on or before such date in each year as the Local Government may by rule fix, an annual statement of accounts of his undertaking made up to such date, in such form, and containing such particulars, as may be prescribed by the said rule.

(2) The licensee shall keep copies of such annual statement at his office and sell the same to any applicant at a price not exceeding one rupee per copy.

Provisions as to the opening and breaking up of streets, railway and tramways. 12. (1) Any licensee may, from time to time but subject always to the terms and conditions of his license,—

(a) open and break up the soil and pavement of any street, railway or tramway within the area of supply;

(b) open and break up any sewer, drain or tunnel in or under any such street, railway or tramway;

(c) lay down and place within the area of supply electric supply-lines and other works ;

(d) repair, alter, or remove the same : and

(e) do all other acts necessary for the due supply of energy within the area of supply.

(2) Nothing contained in sub-section (1) shall be deemed to authorize or empower a licensee, without the consent of the local authority or of the owner and occupier concerned, as the case may be, to lay down or place any electric supply-line or other work in, through or against any building, or on, over or under any land not dedicated to public use, whereon, whereover or whereunder any electric supply-line or work has not already been lawfully laid down or placed by such licensee :

Provided that any stay or strut required for the sole purpose of securing in position any support of an aerial electric supply-line may be fixed on any building or land or, having been so fixed, may be altered notwithstanding the objection of the owner or occupier of such building or land, if the District Magistrate, or, in a Presidency-town, the Commissioner of Police, by order in writing so directs :

Provided also that if at any time the owner or occupier of any building or land on which any such stay or strut has been fixed shows sufficient cause, the District Magistrate or, in a Presidency-town, the Commissioner of Police, may by order in writing direct any such stay or strut to be removed or altered.

(3) Every order made by a District Magistrate or a Commissioner of Police under sub-section (2) shall be subject to revision by the Local Government.

(4) Nothing contained in sub-section (1) shall be deemed to authorize or empower any licensee to open or break up any street not repairable by a local authority or any railway or tramway, without the consent of the person by whom the same is repairable, unless with the written consent of the Local Government :

Provided that the Local Government shall not give any such consent as aforesaid, until notice has been given, by advertisement or otherwise as the Local Government may direct, to the person by whom the street, railway, or tramway concerned is repairable, and until all representations or objections received in accordance with the notice have been considered by the Local Government.

13. (1) Where the exercise of any of the powers of a licensee in relation to the execution of any works involves the placing of any works in, under, over, along or across any street, part of a street, railway, tramway, canal or waterway, the following provisions shall have effect, namely :—

(a) Not less than one month before commencing the execution of the works (not being a house-service or the repair, renewal or amendment of existing works of which

the character or position is not to be altered), the licensee shall serve upon the person or authority responsible for the repair of the street or part of a street (hereinafter in this section referred to as "the repairing authority") or upon the person or authority for the time being entitled to work the railway, tramway, canal or waterway (hereinafter in this section referred to as "the owner"), as the case may be, a notice in writing describing the proposed works, together with a detailed plan thereof, on a scale which shall not be smaller than eighty eight feet to the inch, or such other scale as the Local Government may approve and intimating the manner in which, and the time at which, it is proposed to interfere with or alter any existing works, and shall, upon being required to do so by the repairing authority or owner, as the case may be, from time to time give such further information in relation thereto as may be desired.

(b) If the repairing authority intimates to the licensee that it disapproves of such works or plan, or approves thereof subject to amendment, the licensee may within one week of receiving such intimation appeal to the Local Government, whose decision, after considering the reasons given by the repairing authority for its action, shall be final.

(c) If the repairing authority fails to give notice in writing of its approval or disapproval to the licensee within one month, it shall be deemed to have approved of the work and plan, and the licensee, after giving not less than forty-eight hours' notice in writing to the repairing authority, may proceed to carry out the works in accordance with the notice and plan served under clause (a).

(d) If the owner disapproves of such works or plan or approves thereof subject to amendment, he may, within three weeks after the service of the notice under clause (a), serve a requisition upon the licensee demanding that any question in relation to the works, or to compensation, or to his obligations to others in respect thereof, shall be determined by arbitration, and thereupon the matter shall unless settled by agreement, be determined by arbitration.

(e) Where no requisition has been served by the owner upon the licensee under clause (d), the owner shall be deemed to have approved of the works and plan, and in that case, or where after a requisition for arbitration the matter has been determined by arbitration, the works may, upon payment or securing of compensation, be executed according to the notice and plan, subject to such modifications as may have been determined by arbitration or agreed upon between the parties.

(f) Where the works to be executed consist of the repair, renewal or amendment of existing works of which the character or position is not to be altered, the licensee shall, except in cases of emergency, give to the repairing authority, or to the owner, as the case may be, not less than forty-eight hours' notice in writing of his intention to execute such works, and, on the expiry of such notice, such works shall be

commenced forthwith and shall be carried on with all reasonable despatch and, if possible, both by day and by night until completed.

(2) Where the licensee makes default in complying with any of these provisions, he shall make full compensation for any loss or damage incurred by reason thereof, and, where any difference or dispute arises as to the amount of such compensation, the matter shall be determined by arbitration.

(3) Notwithstanding anything in this section, the licensee may, in case of emergency due to the breakdown of an underground electric supply-line, after giving notice in writing to the repairing authority or the owner, as the case may be, of his intention to do so, place an aerial line without complying with the provisions of subsection (1) :

Provided that such aerial line shall be used only until the defect in the underground electric supply-line can be made good, and in no case for a period exceeding six weeks, and shall be removed as soon as may be after such defect is removed.

14. (1) Any licensee may alter the position of any pipe (not forming, in a case where the licensee is not a local authority, part of a local authority's main sewer), or of any wire under or over any place which he is authorized to open or break up, if such pipe or wire is likely to interfere with the exercise of his powers under this Act; and any person may alter the position of any electric supply-lines or works of a licensee under or over any such place as aforesaid, if such electric supply-lines or works are likely to interfere with the lawful exercise of any powers vested in him.

(2) In any such case as aforesaid the following provisions shall, in the absence of an agreement to the contrary between the parties concerned, apply namely :—

(a) Not less than one month before commencing any alteration, the licensee or other person desiring to make the same (hereinafter in this section referred to as "the operator") shall serve upon the person for the time being entitled to the pipe, wire, electric supply-lines or works, as the case may be (hereinafter in this section referred to as "the owner"), a notice in writing, together with a plan, on a scale which shall not be smaller than eighty-eight feet to the inch, or such other scale as the Local Government may approve, describing the proposed alteration, and intimating the time when it is to be commenced, and shall subsequently give such further information in relation thereto as the owner may desire.

(b) Within fourteen days after the service of the notice and plan upon the owner, the owner may serve upon the operator a requisition to the effect that any question arising upon the notice or plan shall be settled by arbitration, and thereupon the matter shall, unless settled by agreement, be determined by arbitration.

(c) Every arbitrator to whom a reference is made under clause (b), shall have

regard to any duties or obligations, which the owner is under, and may require the operator to execute any temporary or other works so as to avoid as far as possible interference therewith.

(d) Where no requisition is served upon the operator under clause (b), or where such a requisition has been served and the matter has been settled by agreement or determined by arbitration, the alteration may, upon payment or securing of any compensation accepted or determined by arbitration, be executed in accordance with the notice and plan and subject to such modifications as may have been determined by arbitration or agreed upon between the parties.

(e) The owner may, at any time before the operator is entitled to commence the alteration, serve upon the operator a statement in writing to the effect that he desires to execute the alteration himself and requires the operator to give such security for the repayment of any expenses as may be agreed upon or, in default of agreement, settled by arbitration.

(f) Where a statement is served upon the operator under clause (e), he shall not less than forty-eight hours before the execution of the alteration is required to be commenced, furnish such security and serve upon the owner a notification in writing intimating the time when the alteration is required to be commenced, and the manner in which it is required to be made; and thereupon the owner may proceed to execute the alteration as required by the operator.

(g) Where the owner declines to comply, or does not, within the time and in the manner prescribed by a notification served upon him under clause (f), comply with the notification, the operator may himself execute the alteration.

(h) All expenses properly incurred by the owner in complying with a notification served upon him by the operator under clause (f) may be recovered by him from the operator.

(i) Where the operator makes default in complying with any of these provisions, he shall make full compensation for any loss or damage incurred by reason thereof, and, where any difference or dispute arises as to the amount of such compensation, the matter shall be determined by arbitration.

15. (1) Where a licensee requires to dig or sink any trench for laying down any new electric supply-lines (not being service-lines) of other works, near to which any sewer, drain, watercourse or work under the control of the Local Government or of any local authority, or any main, pipe, syphon, electric supply-line or other work belonging to any duly authorized person, has been lawfully placed, or where any duly authorized person requires to dig or sink any trench for laying down or constructing any new mains or pipes (not being service-pipes) of other works, near to which any electric supply-lines or work

of a licensee have been lawfully placed, the licensee or such duly authorized person, as the case may be (hereinafter in this section referred to as "the operator") shall, unless it is otherwise agreed upon between the parties interested or in case of sudden emergency, give to the Local Government or local authority, or to such duly authorized person, or to the licensee, as the case may be (hereinafter in this section referred to as "the owner"), not less than forty-eight hours' notice in writing before commencing to dig or sink the trench, and the owner shall have the right to be present during the execution of the work, which shall be executed to the reasonable satisfaction of the owner.

(2) Where the operator finds it necessary to undermine, but not to alter, the position of any pipe, electric supply-line or work, he shall temporarily support it in position during the execution of the work, and before completion shall provide a suitable and proper foundation for it where so undermined.

(3) Where the operator (being the licensee) lays any electric supply-line across, or so as to be liable to touch, any mains, pipes, lines or service-pipes or lines belonging to any duly authorized person or to any person supplying or using energy under this Act, he shall not, except with the consent of such person and of the Local Government, lay his electric supply-lines so as to come into contact with such mains, pipes, lines or service-pipes or lines, or, except with the like consent, employ any such mains, pipes, lines or service-pipes or lines as conductors for the purpose of supplying energy.

(4) Where the operator makes default in complying with any of the provisions of this section, he shall make full compensation for any loss or damage incurred by reason thereof.

(5) Where any difference or dispute arises under this section, the matter shall be determined by arbitration.

(6) Where the licensee is a local authority, the references in this section to the local authority and to sewers, drains, water courses or works under its control shall not apply.

16. (1) Where any person, in exercise of any of the powers conferred by or under this Act, opens or breaks up the soil or pavement of any street, railway or tramway, or any sewer drain or tunnel, he shall—
 Streets, railways or tramways broken up to be reinstated without delay.

(a) immediately cause the part opened or broken up to be fenced and guarded;

(b) before sunset cause a light, sufficient for the warning of passengers, to be set up and maintained until sunrise against or near the part opened or broken up;

(c) with all reasonable speed fill in the ground and reinstate and make good the soil or pavement, or the sewer, drain or tunnel opened or broken up, and carry away the rubbish occasioned by such opening or breaking up; and,

(d) after reinstating and making good the soil or pavement, or the sewer; drain or tunnel, broken or opened up, keep the same in good repair for three months and for any further period, not exceeding nine months, during which subsidence continues.

(2) Where any person fails to comply with any of the provisions of sub-section (1), the person having the control or management of the street, railway, tramway, sewer, drain or tunnel in respect of which the default has occurred, may cause to be executed the work which the defaulter has delayed or omitted to execute, and may recover from him the expenses incurred in such execution.

(3) Where any difference or dispute arises as to the amount of the expenses incurred under sub-section (2), the matter shall be determined by arbitration.

17. (1) Nothing in this Part shall be deemed to authorize or empower a licensee to place any aerial line along or across any street unless and until the Local Government, after consulting the local authority, has communicated to him a general approval in writing of the methods of construction which he proposes to adopt;

Provided that the communication of such approval shall in no way relieve the licensee of his obligations with respect to any other consent required by or under this Act.

(2) Where any aerial line has been placed or maintained by a licensee in breach of the provisions of sub-section (1), the Local Government may require the licensee forthwith to remove the same, or may cause the same to be removed and recover from the licensee the expenses incurred in such removal.

(3) Where any tree, standing or lying near an aerial line, interrupts or interferes with, or is likely to interrupt or interfere with, the conveyance or transmission of energy, a Magistrate of the first class may, on the application of the licensee, cause the tree to be removed or otherwise dealt with as he thinks fit.

(4) When disposing of an application under sub-section (3), the Magistrate shall, in the case of any tree in existence before the placing of the aerial line, award to the person interested in the tree such compensation as he thinks reasonable, and such person may recover the same from the licensee.

18. (1) A licensee shall, in exercise of any of the powers conferred by or under this Act, cause as little damage, detriment and inconvenience as may be, and shall make full compensation for any damage caused by him or by any one employed by him.

(2) Where any difference or dispute arises as to the amount or the application of such compensation, the matter shall be determined by arbitration.

Power for licensee to enter premises for ascertaining energy consumed, or to remove fittings or other apparatus of licensee.

19. (1) A licensee or any person duly authorized by a licensee may at any reasonable time, and on informing the occupier of his intention, enter any premises to which energy is or has been supplied by him, for the purpose of—

(a) inspecting and testing the electric supply-lines, meters, fittings, works and apparatus for the supply of energy belonging to the licensee;

(b) ascertaining the quantity of energy consumed or supplied; or

(c) removing, where a supply of energy is no longer required, or where the licensee is authorized to take away and out off such supply, any electric supply-lines, fittings, works or apparatus belonging to the licensee.

(2) A licensee or any person authorized as aforesaid may also, in pursuance of a special order in this behalf made by the District Magistrate, or, in a Presidency-town, by the Commissioner of Police, and after giving not less than twenty-four hours notice in writing to the consumer, enter any premises to which energy is or has been supplied, or is to be supplied, by him, for the purpose of examining and testing the electric wires, fittings, works and apparatus for the use of energy belonging to the consumer.

20. (1) A licensee shall not be entitled to prescribe any special form of appliance for utilizing energy supplied by him, or save as provided by section 23, sub-section (2), or by section 30, sub-section (6), in any way to control or interfere with the use of such energy.

Restriction on licensee's controlling or interfering with use of energy.

Provided that no person may adopt any form of appliance, or use the energy supplied to him, so as unduly or improperly to interfere with the supply by the licensee of energy to any other person.

(2) Where any difference or dispute arises under this section, the matter shall be determined by arbitration.

21. Where energy is supplied by a licensee, every person within the area of supply shall, except in so far as is otherwise provided by the terms and conditions of the license, be entitled, on application, to a supply on the same terms as those on which any other person in the same area is entitled in similar circumstances to a corresponding supply :

Obligation on licensee to supply energy.

Provided that no person having a private generating plant shall be entitled to demand a connection with the mains of the licensee in order to use the energy of the licensee only in the event of accident to the plant of such person.

22. (1) The electrical power at which any consumer shall be entitled to be supplied by a licensee, shall not exceed what is necessary for the maximum consumption of energy on his premises.

Maximum electrical power.

Provided that, where a consumer has required a licensee, to supply him at a specified maximum power, he shall not be entitled to alter that maximum except after one month's notice in writing to the licensee, and the licensee may recover from the consumer any expenses incurred by him by reason of the alteration in respect of the service-lines by which energy is supplied to the consumer's or premises of any fittings or apparatus of the licensee upon those premises.

(8) Where any difference or dispute arises between a consumer and a licensee as to the power at which energy is to be supplied under sub-section (1) or as to the amount of the expenses incurred under the proviso thereto, the matter shall be determined by arbitration.

20. (1) A licensee shall not, in making any agreement for the supply of energy, show undue preference to any person, but may, save as aforesaid, make such charges for the supply of energy as may be agreed upon, not exceeding the limits imposed by his licensee, and may allow rebates thereon according to the quantity supplied, either in relation to the maximum power to which the consumer is entitled under section 22, or to the total quantity, or to the time at which the supply is needed.

Charges for energy to be made without undue preference.

(2) Notwithstanding anything in sub-section (1), the licensee may, with the consent of the Local Government, charge at one rate for the supply of energy for lighting purposes, and at other rates for the supply of energy for the purpose other than lighting; and no person shall be entitled to utilize for one purpose energy supplied to him at a lower rate for any other purpose.

(3) Where any difference or dispute arises between a consumer and a licensee as to any matter provided for in sub-section (1) or sub-section (2), the matter shall be determined by arbitration.

24. Where any person neglects to pay any charge for energy, or any other sum due from him to a licensee in respect of the supply of energy to him, the licensee may, after giving not less than seven clear days' notice in writing to such person and without prejudice to his right to recover such charge or other sum by suit, cut off the supply and for that purpose cut or disconnect any electric supply-line or other works through which energy may be supplied, and may discontinue the supply until such charge or other sum, together with any expenses incurred by him in cutting off and re-connecting the supply, are paid but no longer;

Discontinuance of supply to consumer neglecting to pay charge.

Provided that the provisions of this section shall not apply in any case in which any difference, or dispute of the nature described in section 30, sub-section (7), has been referred for determination by an Electric Inspector or other person as therein provided until such Inspector or other person has given his decision.

25. Where any electric supply-lines, meters, fittings, works or apparatus belonging to a licensee are placed in or upon any premises, not being in the possession of the licensee, for the purpose of supplying energy, such electric supply-lines, meters, fittings, works and apparatus shall not be liable to be taken in execution under any process of any Civil Court or in any proceedings in insolvency against the person in whose possession the same may be.

26. No licensee shall, in exercise of any of the powers conferred by or under this Act, in any way injure any railway, tramway or canal or (in cases where the licensee is not a local authority) any dock, wharf or pier vested in or controlled by a local authority, or obstruct or interfere with the traffic on any railway, tramway or canal.

27. (1) Nothing in this Act shall be deemed to authorize or empower any licensee to lay down any underground, or place any aerial, electric supply-line or other works, or to make any alterations in any telegraph line, maintained or worked by the Government or by any person licensed under the Indian Telegraph Act, 1885 without the previous sanction of the telegraph-authority, to whom the licensee shall give not less than one month's notice in writing of his intention, specifying the course of the works or alterations proposed, the manner in which the works are to be utilized, the amount and nature of the energy to be transmitted, and the extent to, and manner in, which (if at all) earth returns are to be used; and the licensee shall conform with such reasonable requirements, either general or special, as may be laid down by the telegraph authority for preventing any telegraph line from being injuriously affected by such works or alterations:

Provided that, in case of emergency (which shall be stated by the licensee in writing to the telegraph-authority) arising from defects in any of the electric supply-lines or other works of the licensee, the licensee shall be required to give only such notice as may be possible after the necessity for the proposed new works or alterations has arisen.

(2) Every licensee shall take all reasonable precautions in constructing, laying down and placing his electric supply-lines and other works and in working his undertaking, so as not injuriously to affect, whether by induction or otherwise, the working of any wire or line used for the purpose of telegraphic, telephonic or electric-signalling communication, or the currents in such wire or line.

(3) Where any difference or dispute arises between the licensee and the telegraph authority or any person licensed under the Indian Telegraph Act, 1885, as to whether the licensee has constructed, laid down or placed his electric supply-lines or other

works, or made alterations in a telegraph line, or worked his undertaking, in contravention of sub-section (1), or sub-section (2), or as to whether the working of any wire-line or current is or is not injuriously affected thereby, the matter shall be referred to the Governor General in Council; and the Governor General in Council, unless he is of opinion that the wire or line has been placed in unreasonable proximity to the electric supply-lines or works of the licensee after the construction of such lines or works, may direct the licensee to make such alterations in, or additions to, his system as may be necessary in order to comply with the provisions of this section, and the licensee shall make such alterations or additions accordingly :

Provided that nothing in this sub-section shall apply to the repair, renewal or amendment of any electric supply-line, so long as the course of the electric supply-line and the amount and nature of the current transmitted thereby are not altered.

(4) Where a licensee makes default in complying with the requirements of this section, he shall make full compensation for any loss or damage incurred by reason thereof, and, where any difference or dispute arises as to the amount of such compensation, the matter shall be determined by arbitration.

Explanation.—For the purposes of this section, a telegraph-line shall be deemed to be injuriously affected by a work if telegraphic communication by means of such line is, whether through induction or otherwise, prejudicially interfered with by such work or by any use made thereof.

28. (1) Every licensee shall, within twentyfour hours of the occurrence, send to the Local Government and to the District Magistrate, or in a Presidency-town, to the Commissioner of Police notice in writing of any accident by explosion, fire, electric shock or fall of an aerial line and also of any other accident resulting or likely to have resulted in loss of life or personal injury in any part of the licensee's works or circuits, or in connection with the same, and also notice of any loss of life or personal injury actually occasioned by any such accident.

(2) The Local Government may also, if it thinks fit, appoint any Electric Inspector or other competent person to inquire and report as to the cause of any accident affecting the safety of the public, which may have been occasioned by or in connection with a licensee's works, or as to the manner in, and extent to which the provisions of the license and of this Act, so far as these provisions affect the safety of the public, have been complied with by the licensee.

29. If at any time it is established, to the satisfaction of the Local Government,

Power for Local Government to interfere in certain cases of default by licensee.

(a) that a licensee is supplying energy otherwise than by means of a system which has been approved of by the Local Government or (except in accordance with the provisions of his license) his permitted any part of his circuits to be connected with earth, or

(b) that any electric supply-lines or works of a licensee are defective; or

(c) that any works of a licensee or his supply of energy are or is attended with danger to the public safety;

the Local Government may, by order in writing, specify the matter complained of and require the licensee to remedy it in such manner as shall be specified in the order, and may also in like manner forbid the use of any electric supply-line or works until the order is complied with or for such time as is specified in the order.

80. (1) In the absence of an agreement to the contrary, the amount of energy supplied to a consumer or the electrical quantity contained in the supply (such amount or quantity being hereinafter referred to as "the value of the supply") shall be ascertained by means of a duly certified meter, and the licensee shall if required by the consumer, cause the consumer to be supplied with such a meter:

Meters.

Provided that the licensee may require the consumer to give him security for the price of a meter and enter into an agreement for the hire thereof, unless the consumer elects to purchase a meter.

(2) Where the consumer so enters into an agreement for the hire of a meter the licensee shall keep the meter in proper order for correctly registering the value of the supply, and in default of his doing so, the consumer shall, for so long as the default continues, cease to be liable to pay for the hire of the meter.

(3) Where the meter is the property of the consumer, he shall keep the meter in proper order for correctly registering the value of the supply, and, in default of his doing so, the licensee may, for so long as the default continues, cease to supply energy through the meter.

(4) The licensee or any person duly authorized by the licensee shall at any reasonable time and on informing the consumer of his intention, have access to, and be at liberty to take off, remove, test, inspect and replace, any meter whereby the value of the supply is ascertained or to be ascertained; and, except where the meter is so hired as aforesaid all reasonable expenses of, and incidental to, such taking off, removing, testing, inspecting and replacing, and the procuring the meter to be again duly certified, where that is thereby rendered necessary, shall, if the meter is found to be otherwise than in proper order, be recovered from the consumer; and where any difference or dispute arises as to the amount of such reasonable expenses, the matter shall be determined by arbitration;

Provided that the licensee shall not be at liberty to take off or remove any such meter if any difference or dispute of the nature described in sub-section (7) has arisen until the matter has been determined as therein provided.

(5) A consumer shall not connect any meter, whereby the value of the supply is ascertained or to be ascertained with any electric supply-line through which energy is supplied by a licensee, or disconnect the same from any such electric supply-line, without giving to the licensee not less than forty-eight hours' notice in writing of his intention.

(6) In addition to any meter which may be placed upon the premises of a consumer to ascertain the value of the supply, the licensee may place upon such premises such meter or other apparatus as he may think fit for the purpose of ascertaining or regulating either the amount of energy supplied to the consumer, or the number of hours during which the supply is given, or the maximum power taken by the consumer, or any other quantity or time connected with the supply.

Provided that the meter or apparatus shall be of a construction and pattern approved of by the Local Government, and shall be fixed and connected with the service-lines in a manner so approved, and shall be supplied and maintained entirely at the cost of the licensee, and shall not, in the absence of an agreement to the contrary, be placed otherwise than between the mains of the licensee and the consumer's terminals.

(7) Where any difference or dispute arises as to whether any meter, whereby the value of the supply as to pressure or quantity is ascertained or to be ascertained, is or is not in proper order for correctly registering the value of the supply, or as to whether such value has in any case been correctly registered by the meter, the matter shall be determined, upon the application of either party by an Electric Inspector or by a competent person specially appointed by the Local Government in this behalf; and where the meter has in the opinion of such Inspector or person, ceased to work for a period not exceeding one month, such Inspector or person shall estimate the value of the supply for such period on the basis of the value of the previous supply; and the decision of such Inspector or person shall be final and the costs of or incidental to such determination shall be recoverable as such Inspector or person may direct: but save as aforesaid, the register of the meter, whereby the value of the supply is ascertained, shall, in the absence of fraud, be conclusive proof of such value.

Explanation.—A meter shall be deemed to be "duly certified" if it is certified by an Electric Inspector or by a competent person appointed by the Local Government in this behalf to be a correct meter, and to be of a construction and pattern approved by the Local Government, and to have been fixed and connected with the electric supply-lines in a manner so approved:

Provided that, where any alteration is made in a duly certified meter, or where any such meter is unfixed or disconnected from the electric supply-lines it shall cease to be a duly certified meter unless and until it is again duly certified as aforesaid.

PART III.

RESTRICTIONS ON USE OF ENERGY NOT SUPPLIED UNDER PART II.

31. (1) No person shall, for any purpose, in any street, or in any place in which one hundred or more persons are likely ordinarily to be assembled or which is a factory within the meaning of the Indian Factories Act, 1881, use energy which is not supplied to him under Part II, without giving not less than seven clear days' notice in writing of his intention to the District Magistrate or, in a Presidency-town, to the Commissioner of Police, and complying with such rules as may be made in this behalf under section 33 :

Provided that nothing in this section shall apply to any railway or tramway subject to the provisions of the Indian Railways Act 1890.

Provided also that the Local Government may, by general or special order and subject to such conditions and restrictions as may be specified therein, exempt any person or class of persons using energy on premises upon or in connection with which it is generated, from the application of this section or of any such rule as aforesaid.

(2) Where any difference or dispute arises as to whether a place is or is not one in which one hundred or more persons are likely ordinarily to be assembled, the matter shall be referred to the Local Government, and the decision of the Local Government thereon shall be final.

PART IV.

GENERAL.

32. (1) The Governor General in Council may, for the whole or any part of British India and each Local Government, with the previous sanction of the Governor General in Council, may for the whole or any part of the province, by notification in the Gazette of India or the local official Gazette, as the case may be, constitute an Advisory Board.

(2) Every such Board shall consist of—

(a) A Chairman and two other members, or, where the Board is to consist of only three members, one other member, nominated by the Governor General in Council or the Local Government as the case may be, and

(b) Two members, or, where the Board is to consist of only three members, one member nominated by such local authorities, Chambers of Commerce or other Associations as the Governor General in Council or the Local Government, as the case may be, may by rule prescribe.

(5) The Governor General in Council or the Local Government, as the case may be, may give directions as to the payment of travelling expenses incurred by any member of an Advisory Board in the performance of his duty as such member.

83. (1) The Governor General in Council may, for the whole or any part of British India, and each Local Government, with the previous sanction of the Governor General in Council, may, for the whole or any part of the Province, make rules to regulate the generation, supply and use of energy, and, generally to carry out the purposes and objects of this Act.

Power for Government to make rules.

(2) In particular and without prejudice to the generality of the foregoing power, such rules may—

(a) prescribe the form of applications for licenses and the payments to be made in respect thereof.

(b) regulate the publication of notices;

(c) prescribe the manner in which, and the time within which, representations or objections with reference to any application under Part II are to be made;

(d) provide for the preparation and submission of accounts by licensees in a specified form;

(e) provide for the securing of a regular, constant and sufficient supply of energy by licensees to consumers and for the testing at various parts of the system of the regularity and sufficiency of such supply and for the examination of the records of such test by consumers;

(f) provide for the protection of persons and property from injury by reason of contact with, or the proximity of, or by reason of the defective or dangerous condition of, any appliance or apparatus used in the generation, supply or use of energy;

(g) for the purposes of any electric tramway, regulate the employment of insulated returns, or of uninsulated metallic returns of low resistance, in order to prevent fusion or injurious electrolytic action of or on gas or water pipes or other metallic pipes, structures or substances, and to minimise, as far as is reasonably practicable, injurious interference with the electric wires, supply-lines and apparatus of parties other than the owners of the tramway, or with the currents therein, whether the earth is used as a return or not; and for the like purposes apply or adapt any of the provisions of Part II;

(h) provide for preventing telegraph lines and magnetic observatories or laboratories from being injuriously affected by any appliance or apparatus used in the generation, supply or use of energy;

(i) provide for the appointment of Electric Inspectors by the Local Government and, with the sanction of the Local Government, by local authorities, and prescribe the qualifications to be required of such Inspectors and their remuneration and duties;

(j) provide for the appointment of members of Advisory Boards and define the duties and regulate the procedure of such Boards;

(k) authorize any Electric Inspector or other officer of a specified rank and class to enter, inspect and examine any place, carriage or vessel in which he has reason to believe any appliance or apparatus used in the generation, supply or use of energy to be, and to carry out tests therein, and to prescribe the facilities to be given to such Inspectors or officers for the purposes of such examinations and tests; and

(l) authorize and regulate the levy of fees for any such testing or inspection and, generally, for the services of Electric Inspectors under this Act.

(3) In making any rule under this Act, the Governor General in Council or the Local Government, as the case may be, may direct that every breach thereof shall be punishable with fine which may extend to one hundred rupees, and, in the case of a continuing breach, with a further daily fine which may extend to fifty rupees.

Further provisions respecting rules. 34. (1) The power to make rules under section 33 shall be subject to the condition of the rules being made after previous publication.

(2) The date to be specified in accordance with clause (3) of section 23 of the General Clauses Act, 1897, as that after which a draft of rules proposed to be made under this section will be taken into consideration shall not be less than three months from the date on which the draft of the proposed rules was published for general information.

(3) Where an Advisory Board has been constituted under section 32 by the Governor General in Council or by the Local Government, any rule to be made under this Act shall, before it is published for criticism under sub-section (2), be referred, in the case of a rule to be made by the Governor General in Council, to the Advisory Board constituted by the Governor General in Council, and, in the case of a rule to be made by the Local Government, to an Advisory Board constituted by such Government, and the rule shall not be so published until such Board has reported as to the expediency of making the proposed rule and as to the suitability of its provisions.

(4) All rules made under section 33 shall be published in the Gazette of India or the local official Gazette, as the case may be, and on such publication shall have effect as if enacted in this Act.

35. Notwithstanding anything in sections 12 to 18, the Governor General in Council may, for the placing of appliances and apparatus for the transmission of energy for any purpose, confer upon any public officer or licensee any of the powers which the telegraph authority possessed under, and subject to the provisions of the Indian Telegraph Act, 1885, with respect to the placing of telegraph lines and posts for the purposes of tele-

Exercise in certain cases of power of telegraph authority.

graph established or maintained by the Government or to be so established or maintained.

36. Where any matter is, by or under this Act, directed to be determined by arbitration, the matter shall, unless it is otherwise expressly provided in the license of a licensee, be determined by such person or persons as the Governor General in Council or the Local Government may nominate in that behalf on the application of either party; but in all other respects the arbitration shall be subject to the provisions of the Indian Arbitration Act, 1899.

37. (1) Every notice, order or document by or under this Act required or authorized to be addressed to any person may be served, by
 Service of notices, orders or documents. post or left,—

(a) where the Government is the addressee, at the office of the Secretary in the Public Works Department;

(b) where a local authority is the addressee, at the office of the local authority;

(c) where a company is the addressee, at the registered office of the company;

(d) where any other person is the addressee, at the usual or last known place of abode or business of the person.

(2) Every notice, order or document by or under this Act required or authorized to be addressed to the owner or occupier of any premises shall be deemed to be properly addressed if addressed by the description of the "owner" or "occupier" of the premises (naming the premises), and may be served by delivering it or a true copy thereof, to some person on the premises, or, if there is no person on the premises to whom the same can with reasonable diligence be delivered by affixing it on some conspicuous part of the premises.

38. Every sum declared to be recoverable by section 5, clause (f), section 6, section 14, sub-section (2), clause (h), section 16, sub-section (2), section 17, sub-section (2) or sub-section (4), section 22, sub-section (1), or section 30, sub-section (4) or sub-section (7), and every fee leviable under this Act may be recovered, on application to a Magistrate having jurisdiction where the person liable to pay the same is for the time being resident, by the distress and sale of any moveable property belonging to such person.

39. (1) Whoever dishonestly abstracts, consumes or uses any energy, shall be deemed to have committed theft within the meaning of the
 Penalties. Indian Penal Code.

(2) Whoever maliciously causes energy to be wasted or diverted, or, with intent to cut off the supply of energy cuts or injures, or attempts to cut or injure, any elec-

tric supply-line or works, shall be punishable with imprisonment for a term which may extend to two years, or with fine which may extend to one thousand rupees, or with both.

(3) Whoever,—

(a) being a licensee, without the previous sanction of the Local Government, supplies energy or lays down or places any electric supply-line or works outside the area of supply; or

(b) fails to prevent any variation of pressure exceeding the limits of variation prescribed by the rules made under this Act; or,

(c) makes default in complying with any order issued to him by the Local Government under section 29;

shall be punishable with fine which may extend to one thousand rupees, and, in the case of a continuing offence or default, with a daily fine which may extend to one hundred rupees.

(4) Whoever uses energy in contravention of the provisions of section 31 shall be punishable with fine which may extend to five hundred rupees, and, in the case of a continuing offence, with a daily fine which may extend to fifty rupees.

(5) Whoever—

(a) connects any meter, whereby the value of the supply is ascertained or to be ascertained, with any electric supply-line through which energy is supplied by a licensee, or disconnects the same from any such electric supply-line, without giving to the licensee forty-eight hours' notice in writing of his intention; or

(b) lays, or causes to be laid, or connects up any works for the purpose of communicating with any other works belonging to a licensee, without such licensee's consent; or

(c) maliciously injures any meter, whereby the value of the supply to a consumer by a licensee is ascertained; or

(d) improperly uses the energy of a licensee; shall be punishable with fine which may extend to one hundred rupees, and, in the case of a continuing offence, with a daily fine which may extend to fifty rupees.

(6) Whoever maliciously extinguishes any electric light supplied for the public use, shall be punishable with fine which may extend to two hundred rupees.

(7) Whoever negligently causes energy to be wasted or diverted, or negligently breaks, throws down or damages any electric supply-line, post, pole or lamp or other apparatus connected with the supply of energy, shall be punishable with fine which may extend to fifty rupees.

(8) Whoever, in any case not already provided for by this section, makes default in complying with any of the provisions of this Act, or with any order issued under it

or, in the case of a licensee, with any of the conditions of his license, shall be punishable with fine which may extend to one hundred rupees, and, in the case of a continuing default, with a daily fine which may extend to twenty rupees:

Provided that, where a person has made default in complying with any of the provisions of sections 13, 14, 15, and 27, as the case may be, he shall not be so punishable if the Court is of opinion that the case was one of emergency and that the offender complied with the said provisions as far as was reasonable in the circumstances.

(9) The penalties imposed by this section shall be in addition to, and not in derogation of any liability in respect of the payment of compensation or in the case of licensee, the revocation of his license, which the offender may have incurred.

(10) The provisions of sub-sections (1), (2), (5), (6) and (7) shall, so far as they are applicable, be deemed to apply also when the acts made punishable thereunder are committed in the case of energy supplied by or of works belonging to the Government.

40. The powers and duties of the Local Government under Part II shall, when

Functions of Local Government under Part II. in certain places to be performed by Governor General in Council

the energy is to be supplied within the limits of any cantonment or of any fortress, arsenal, factory dockyard, camp or of any building or place in the occupation of Government for naval or military purposes, be exercised and performed by the Governor General in Council.

41. No suit, prosecution or other proceeding shall lie against any public officer, or any servant of a local authority, for anything done, or in good faith purporting to be done, under this Act.

Protection for acts done in good faith.

42. (1). The Electricity Act, 1887, the Calcutta Electric Lighting Act, 1895, and the Howrah Bridge Electric Lighting Act, 1902, are hereby repealed:

Repeals and savings.

Provided that nothing in the foregoing provisions of this section shall be deemed to affect the terms of any license granted before the commencement of this Act under the Calcutta Electric Lighting Act, 1895, or any provisions of that Act or any rule made thereunder having reference to any such license.

(2). Nothing in this Act shall be deemed to affect the terms of any other license which has been granted or of any agreement which has been made by or with the sanction of the Government for the supply or use of electricity before the commencement of this Act.

THE SCHEDULE

PROVISIONS TO BE DEEMED TO BE INCORPORATED WITH AND TO FORM PART OF EVERY LICENSE GRANTED UNDER PART II.

[See section 4, sub-section (1) clause (f).]

Security and accounts,

Security for execution of works of licensee not being local authority.

1. Where the licensee is not a local authority, the following provisions as to giving security shall apply, namely;—

(a) The licensee shall, within a period of six months after the commencement of the license and before exercising any of the powers by the license conferred on him in relation to the execution of works, show, to the satisfaction of the Local Government, that he is in a position fully and efficiently to discharge the duties and obligations imposed upon him by the license throughout the area of supply.

(b) The licensee shall also, within six months after the commencement of the license or within such extended period as may be approved by the local Government and before exercising any of the powers conferred on him in relation to the execution of works, deposit or secure, to the satisfaction of the Local Government, such sum if any as may be fixed by the license or, if not so fixed, by the Local Government.

(c) The said sum deposited or secured by the licensee under the provisions of this clause shall be repaid or released to him in equal moieties, when and so soon as it may be certified by an officer appointed by the Local Government in this behalf that amounts equal to the sums so to be repaid or released have been expended by the licensee upon works executed for the purposes of the undertaking, or that distributing mains have been duly laid down by the licensee in every street or part of a street in which he is required to lay them down within a limited time, or shall be repaid or released at such earlier dates, and by such instalments, as may be approved by the Local Government.

(d) Where the area of supply includes two or more local areas for which local authorities are constituted, the Local Government may require the deposit to be made or the security to be given in respect of such local areas severally, and in that case the deposit or security shall be repaid or released separately as to each local area.

Audit of accounts of licensee not being local authority.

II. Where the licensee is not a local authority, the following provisions as to the audit of accounts shall apply, namely:—

(a) The annual statement of accounts of the undertaking shall, before being rendered to the Local Government under section II of the Indian Electricity Act, 1903, be examined and audited by such person as the Local Government may appoint in

this behalf, and the remuneration of the auditor shall be such as the Local Government may direct, and his remuneration and all expenses incurred by him in or about the execution of his duties, to such an amount as the Local Government shall approve shall be paid by the licensee on demand.

(b) The licensee shall afford to the auditor, his clerks and assistants, access to all such books and documents relating to the undertaking as are necessary for the purposes of the audit, and shall, when required, furnish to him and them all vouchers and information requisite for that purpose, and afford to him and them all facilities for the proper execution of his and their duty.

(c) The audit shall be made and conducted in such manner as the Local Government may direct.

(d) Any report made by the auditor, or such portion thereof as the Local Government may direct, shall be appended to the annual statement of accounts of the licensee, and shall thenceforth form part thereof.

III. The licensee shall, unless the Local Government otherwise directs, at all times keep the accounts of the capital employed for the purposes of the undertaking distinct from the accounts kept by him of any other undertaking or business.

Nature and mode of supply.

IV. Energy shall be supplied by the licensee only by means of some system approved in writing by the Local Government, and save as otherwise provided by rules under the Indian Electricity Act, 1903, the licensee shall not permit any part of any circuit to be connected with earth unless the connection is for the time being approved by the Local Government, with the concurrence of the telegraph-authority.

Provisions as to
electric railways and
tramways.

V. Where and in so far as energy is supplied to a tramway for purposes of electric traction, the following provisions shall apply, namely:—

(a) The licensee shall employ either insulated metallic returns, or uninsulated metallic returns of low resistance, save in the case of vehicles in which the motive power is entirely self-contained.

(b) The licensee shall take all reasonable precautions in constructing, placing and maintaining his electric supply-lines and circuits, and other works of all descriptions, and also in working his undertaking, so as not injuriously to affect, by fusion or electrolytic action, any gas or water pipes, or other metallic pipes, structures or substances.

Compulsory works.

VI. The licensee shall, within a period of two years after the commencement of his license, lay down suitable and sufficient distributing mains for the purposes of general supply throughout such streets or parts of streets as the Local Government may, by order in writing issued within six months of the commencement of the license, direct.

Power of Local Government to order licensee to lay down distributing main.

VII. Every licensee shall, not less than one month before commencing to lay in any street any electric supply-line for the supply of energy to any particular consumer, and not for the purposes of general supply, serve upon the local authority (if any) and upon the owner or occupier of all premises abutting on so much of the street as lies between the points of original and termination of the electric supply-line so to be laid, a notice stating that the licensee intends to lay the electric supply-line, and intimating that, if within the said period any two or more of such owners or occupiers require in accordance with the provisions of the license that a supply shall be given to their premises, the necessary distributing main will be laid by the licensee at the same time as the electric supply-line intended for the particular consumer.

Provisions as to laying down of further distributing mains.

VIII. (1) Where, after the expiration of eighteen months from the commencement of the license, a requisition is made by six or more owners or occupiers of premises in or upon any street or part of street within the area of supply or by the Local Government or a local authority charged with the public lighting thereof, requiring the licensee to provide and lay down distributing mains for the purposes of general supply throughout such street or part thereof, the licensee shall comply within six months with the requisition, unless,

(a) where it is made by such owners or occupiers as aforesaid, the owners or occupiers making it do not, within fourteen clear days after the service on them by the licensee of a notice in writing in this behalf, tender to the licensee a written contract, duly executed and with sufficient security, binding themselves to take or guaranteeing that there shall be taken, a supply of energy for not less than three years to such amount as will in the aggregate produce annually, at the current rates charged by the licensee, a reasonable return to the licensee; or,

(b) where it is made by the Local Government or a local authority, the Local Government or local authority, as the case may be, does not, within the like period, tender a like agreement binding itself to take a supply of energy for not less than three years for the public lighting of such street or part thereof.

(2) Where any difference or dispute arises between the licensee, and such owners, occupiers or local authority as to the sufficiency of the security offered under this clause or as to the amount of energy to be taken or guaranteed as aforesaid, the matter shall be referred to the Local Government and either decided by it or, if the Local Government so directs, determined by arbitration.

(3) Every requisition under this clause shall be signed by the maker or makers thereof and shall be served on the licensee.

(4) Every requisition under this clause shall be in a form to be prescribed by rules under the Indian Electricity Act, 1903; and copies of the form shall be kept at the office of the licensee and supplied free of charge to any applicant.

IX. (1) Where a requisition is made by the owners or occupiers of any premises situate within one hundred yards from any distributing main in which the licensee is required to maintain a supply of energy for the purposes of general supply, requiring the licensee to supply energy for such premises the licensee shall supply, and, save in so far as he is prevented from doing so by cyclones, floods, storms or other occurrences beyond his control, continue to supply energy in accordance with the requisition, unless the person making it fails, within fourteen days after the service on him by the licensee of a notice in writing in this behalf, to tender to the licensee a written contract, duly executed and with sufficient security, binding himself to take a supply of energy for not less than two years to such amount as will produce, at current rates charged by the licensee, a reasonable return to the licensee:

Provided, first, that the cost of so much of any electric supply-line as may be laid for the purposes of the supply upon the property in respect of which the requisition is made, and of so much of any electric supply-line as it may be necessary for the said purposes to lay for a greater distance than one hundred feet from the licensee's distributing main although not on that property, shall, if the licensee so requires, be paid by the owner or occupier making the requisition:

Provided, secondly, that the licensee may after he has furnished a supply of energy for any premises, by notice in writing require the owner or occupier within seven days after the date of the service of the notice, to give him security for the payment of all money which may become due to him in respect of the supply, in case the owner or occupier has not already given that security, or in case any security given has become invalid or is insufficient; and, if the owner or occupier fails to comply with the terms of the notice, the licensee may discontinue to supply energy for such premises so long as such failure continues:

Provided, thirdly, that if the owner or occupier of any such premises as aforesaid adopts any form of lamp or burner, or uses the energy supplied to him by the licensee for any purposes, or deals with it in any manner, so as to interfere unduly or improp-

perly with the efficient supply of energy to any other person by the licensee, or fails to keep his meter in proper order, the licensee may discontinue the supply of energy for such premises so long as such lamp or burner is so adopted, or the energy is so used or dealt with, or the meter is not kept in proper order, as the case may be :

Provided, fourthly, that the licensee shall not be bound to furnish a supply of energy to any premises if an Electric Inspector or other competent person appointed by the Local Government is satisfied that the electric line, fittings, works and apparatus therein are not in good order and condition and are likely to affect injuriously the use of energy by the licensee or by other persons :

Provided, fifthly, that in the event of any alterations of, or additions to, any electric wires, fittings, works or apparatus within such premises as aforesaid, all such alterations or additions shall be notified to the licensee by the owner or occupier before being connected to the source of supply, with a view to their being examined and tested : and

Provided, sixthly that, in the event of any requisition being made for a supply of energy from any distributing main of which the licensee can prove, to the satisfaction of an officer appointed by the Local Government in this behalf,—

(a) that it is already loaded up to its full current-carrying capacity, or

(b) that, in case of a larger amount of current being transmitted by it, the loss of pressure will seriously affect the efficiency of the supply to other consumers in the vicinity,

the licensee may refuse to accede to the requisition for such reasonable period, not exceeding six months, as such officer may think sufficient for the purpose of amending the distributing main or laying down a further distributing main,

(3) Where any difference or dispute arises as to the sufficiency of the security offered by such owner or occupier or as to the improper use of energy, or as to any alleged defect in any wires, fittings, works or apparatus, or as to any alleged excess or defect in the pressure or quantity of the energy supplied, the matter shall be referred to the Local Government and either decided by it or, if the Local Government so directs, determined by arbitration.

(5) Every requisition under this clause shall be signed by the maker or makers thereof and shall be served on the licensee.

(4) Every requisition under this clause shall be in a form to be prescribed by rules under the Indian Electricity Act, 1903 ; and copies of the form shall be kept at the office of the licensee and supplied free of charge to any applicant.

X. (1) Where a requisition is made by the Local Government or by a local authority requiring the licensee to supply for a period of not less than one year energy for any public lamps within the distance of one hundred yards from any distributing main in

Supply for public
lamps,

which the licensee is required to maintain a supply of energy for the purposes of general supply, the licensee shall supply, and save in so far as he is prevented from doing so by cyclones, floods, storms or other occurrences beyond his control, continue to supply, energy for such lamps in such quantities as the Local Government or the local authority, as the case may be, may require.

(2) The provisions contained in the first, fourth, fifth and sixth provisos to sub-clause (1) and in sub-clause (2) of Clause IX shall, so far as may be, apply to every case in which a requisition for the supply of energy is made under this clause as if the Local Government or local authority were an owner or occupier within the meaning of those provisions.

Charges.

XI. In the absence of an agreement to the contrary, the licensee may charge for energy supplied by him to any consumer—

- (a) by the actual amount of energy so supplied; or
- (b) by the electrical quantity contained in the supply; or
- (c) by such other method as may be approved by the Local Government:

Provided, first, that, where the licensee charges by any method so approved by the Local Government, any consumer who objects to that method may, by not less than one month's notice in writing, require the licensee to charge him, at the licensee's option, either by the actual amount of energy supplied to him or by the electrical quantity contained in the supply, and thereafter the licensee shall not, except with the consent of the consumer, charge him by another method:

Provided, secondly, that, before commencing to supply energy through any distributing main for the purposes of general supply, the licensee shall give notice, by public advertisement, of the method by which he proposes to charge for energy so supplied; and, where the licensee has given such notice, he shall not be entitled to change that method of charging without giving not less than one month's notice in writing of such change to the Local Government, to the local authority (if any) concerned, and to every consumer of energy who is supplied by him from such distributing main:

Provided, thirdly, that, if the consumer is provided with a duly certified meter for the purposes of ascertaining the value of the supply and the licensee changes the method of charging for the energy supplied by him from the distributing main, the licensee shall bear the expense of providing a new duly certified meter if such is necessary for the purpose of ascertaining the value of the supply according to the new method of charging.

XII. The price charged by the licensee for energy supplied by him shall not exceed the maximum fixed by his license, or, in the case of a method of charge approved by the Local Government, such maximum, as the Local Government shall fix on approving the method :

Maximum charges. Provided that, if, at any time after the expiration of seven years from the commencement of the license, the Local Government considers or is satisfied that the maximum so fixed or approved as aforesaid should be altered, it may, after such inquiry (if any) as it thinks fit, make an order accordingly, which shall have effect from such date as may be mentioned therein :

Provided, also, that where an order in pursuance of the foregoing proviso has been made, no further order altering the maximum fixed thereby shall be made until the expiration of another period of seven years.

XIII. The price to be charged by the licensee and to be paid to him for energy supplied for the public lamps, and the mode in which those charges are to be ascertained, shall be settled by agreement between the licensee and the Local Government or the local authority, as the case may be, and, where any difference or dispute arises the matter shall be determined by arbitration.

Testing and Inspection.

XIV. The licensee shall, at any place within reasonable distance from any main, establish at his own cost and keep in proper condition number of testing stations as the Local Government may direct for the purpose of testing the supply of energy in the main, and shall supply and keep in proper condition thereat, and on all premises from which he supplies energy, such instruments for testing as the Local Government may approve, and shall connect all such testing stations, by means of proper and sufficient electric supply-lines, with the distributing mains, and shall supply energy to each testing station for the purpose of testing.

XV. The licensee shall afford all facilities for inspection and testing of his generating, converting and testing stations and all other parts of his electric system and for the reading, testing and inspection of instruments.

XVI. The licensee may, on each occasion of the testing of any distributing main or electric supply line or the testing or inspection of any instruments, be represented by an agent who may be present but shall not interfere with the testing or inspection.

XVII. On the occasion of the testing of any main of the licensee by an Electric Inspector, reasonable notice thereof shall be given to the licensee, and the testing shall be carried out at such suitable

hours as, in the opinion of the Electric Inspector, will least interfere with the supply of energy by the licensee, and in such manner as the Electric Inspector may think fit; but, except under the provisions of an order made in each case in that behalf by the Local Government, the Electric Inspector shall not be entitled to have access to, or interfere with, the mains of the licensee at any points other than those at which the licensee has reserved for himself access to the same.

Provided that the licensee shall not be held responsible for any interruption in the supply of energy which may be occasioned by or required by the Electric Inspector for the purpose of any such testing as aforesaid:

Provided, also, that the testing shall not be made in regard to any particular portion of a main oftener than once in any three months, unless in pursuance of an order made in each case in that behalf by the Local Government.

Plants.

XVIII. (1) The licensee shall, after commencing to supply energy, forthwith cause a plan to be made of the area of supply, and shall cause to be marked thereon the line and the height above or the depth below the surface of all his then existing mains, electric supply-lines, street distributing boxes and other works, and shall once in every year cause that plan to be duly corrected so as to show the mains, electric supply-lines, street distributing boxes and other works for the time being in existence. The licensee shall also if so required by the Local Government, cause to be made sections showing the level of all his existing distributing mains and underground works other than service-lines.

(2) Every such plan shall be drawn to a scale which shall not be smaller than eighty-eight feet to the inch or to such other scale as may be approved by the Local Government.

(3) Every such section shall be drawn to a horizontal scale which shall not be smaller than eighty-eight feet to the inch and to a vertical scale which shall not be smaller than eleven feet to an inch, or to such other horizontal and vertical scales as may be approved by the Local Government.

(4) Every plan and section so made or corrected, or a copy thereof, marked with the date when it was so made or corrected, shall be kept by the licensee at his principal office or place of business within the area of supply, and shall at all reasonable times be open to the inspection of all applicants, and copies thereof shall be supplied on such terms and conditions as may be prescribed by rules under the Indian Electricity Act, 1908.

(5) The licensee shall, if required by the Local Government, or, where the licensee is not a local authority, by the local authority (if any) concerned, supply to the Local Government or local authority, as the case may be, a copy of every such plan

or section duly corrected so as to agree with the original kept at the principal office or place of business of the licensee.

Additional notice of certain works.

XIX. On the day next preceding the commencement of any such works as are referred to in section 13 of the Indian Electricity Act, 1903, the licensee shall, in addition to any other notices which he may be required to give, serve upon the Electric Inspector or such officer as the Local Government may appoint in this behalf for the area of supply a notice in writing stating that he is about to commence the works and the nature and position of the same.

Notice to Electric Inspector.

ACT No. IV OF 1903.

RECEIVED THE ASSENT OF THE GOVERNOR-GENERAL ON THE 18TH MARCH 1903.

An Act further to amend the Provident Funds Act, 1897.

WHEREAS it is expedient further to amend the Provident Funds Act, 1897; It is hereby enacted as follows :—

1. This Act may be called the Provident Funds (Amendment) Act, 1903.

Short title.

2. For section 4 of the Provident Funds Act, 1897, the following section shall be substituted, namely :—

Substitution of new section for section 4, Act IX, 1897.

"4. (1) Compulsory deposits in any Government or Railway Provident Fund shall not be liable to any attachment under any decree or order of a Court of Justice in respect of any debt or liability incurred by a subscriber to, or depositor in, any such Fund, and neither the Official Assignee nor a Receiver appointed under Chapter XX of the Code of Civil Procedure shall be entitled to, or have any claim on, any such compulsory deposit.

Protection to deposits and other sums in certain cases.

(2) Any sum standing to the credit of any subscriber to, or depositor in any such Fund at the time of his decease and payable under the rules of the Fund or under this Act to the widow or the children, or partly to the widow and partly to the children, of the subscriber or depositor, or to such person as may be authorized by law to receive payment on her or their behalf, shall vest in the widow or the children, or partly in the widow and partly in the children, as the case may be, free from any debt or other liability incurred by the deceased, or incurred by the widow or by the children, or by any one or more of them, before the death of such subscriber or depositor.

(3) Nothing in sub-section (2) shall apply in the case of any such subscriber or depositor as aforesaid dying before the thirteenth day of March, 1903."

ACT NO. V OF 1903.

RECEIVED THE ASSENT OF THE GOVERNOR-GENERAL ON THE 13TH MARCH 1903.

An Act further to amend the Indian Ports Act, 1889.

WHEREAS it is expedient further to amend the Indian Ports Act, 1889; It is hereby enacted as follows:—

Short title.

1. This Act may be called the Indian Ports (Amendment) Act, 1903.

2. In section 47 of the Indian Ports Act, 1889, the proviso shall be omitted; and for section 48 of the said Act the following section shall be substituted, namely:—
Amendment of section 47, and substitution of new section for section 48, Act X, 1889.

Port-dues not to be chargeable in certain cases.

" 48. No port-due shall be chargeable in respect of—

(a) any pleasure-yacht, or

(b) any vessel which, having left any port, is compelled to re-enter it by stress of weather or in consequence of having sustained any damage, or

(c) any vessel which, having entered any port within the territories administered by the Governor of Port Saint George in Council, leaves it within forty-eight hours without discharging or taking in any passengers or cargo."

Substitution of new entry for entry in column 4, Part I, First Schedule, Act, X, 1889.

3. For the first entry in the fourth column of Part I of the First-Schedule to the said Act, the following entry shall be substituted, namely:—

" Whenever the vessel enters port, except in the case of mail-steamer, and sorting vessels, which shall not be chargeable more than once in sixty-days.

Addition of proviso to explanation I, Part II, First Schedule, Act X, 1889.

4. To explanation I of Part II of the said Schedule to the said Act, the following proviso shall be added, namely
X, 1889.

" Provided that, for the purpose of the levy of port-dues, a vessel shall not be deemed, during one and the same voyage, to be both a coasting ship or steamer and a

foreign ship or steamer, but port-dues shall, in respect of such voyage, be leviable on such vessel either as a coasting or as a foreign ship or steamer, whichever rate is the higher."

ACT No. VI OF 1903.

RECEIVED THE ASSENT OF THE GOVERNOR-GENERAL ON THE 13TH MARCH 1903.

Act An further to amend the Indian Paper Currency Act, 1882,

WHEREAS it is expedient further to amend the Indian Paper Currency Act, 1882 in manner hereinafter appearing; It is hereby enacted as follows:—

Short title. 1. This Act may be called the Indian Paper Currency (Amendment) Act, 1903.

2. For sections 16 and 17 of the Indian Paper Currency Act, 1882, the following shall be substituted, namely:—

Amendment of Act
XX of 1882, sections
16 and 17.

"16. A currency note for five rupees, issued from any town not situate in Burma, shall be a legal tender at any place in British India except Burma,

Notes where legal
tender.

a currency note for five rupees, issued from any town in Burma, shall be a legal tender at any place in Burma, and

a currency note for any amount exceeding five rupees shall be a legal tender at any place within the Circle from which the note was issued,

for the amount expressed in the note, in payment or on account of—

(a) any revenue or other claim, to the amount of five rupees and upwards, due to the Government of India, and

(b) any sum of five rupees and upwards, due by the Government of India or by any body corporate or person in British India:

Provided that no currency note shall be deemed to be a legal tender by the Government of India at any office of issue.

"17. (1) A currency note for five rupees, issued from any town not situate in Burma shall be payable at any office of issue not situate in Burma.

Notes where pay-
able.

(2) A currency note for five rupees, issued from any town in Burma, shall be payable only at an office of issue in such town.

(3) A currency note for any amount exceeding five rupees shall be payable only—

(a) at an office of issue of the town from which it was issued, and

(b) in the case of notes issued from any town not situate in Burma, also at the Presidency town of the Presidency within which that town is situate."

ACT No. VII OF 1903.

RECEIVED THE ASSENT OF THE GOVERNOR-GENERAL ON THE 13TH MARCH 1902.

An Act to provide for imposing restrictions upon the use and enjoyment of land in the vicinity of works of defence in order that such land may be kept free from buildings and other obstructions, and for determining the amount of compensation to be made on account of such imposition.

WHEREAS it is expedient to provide for imposing restrictions upon the use and enjoyment of land in the vicinity of works of defence in order that such land may be kept free from buildings and other obstructions and for determining the amount of compensation to be made on account of such imposition; It is hereby enacted as follows:—

PART I.

PRELIMINARY.

1. (1) This Act may be called the Indian Works of Defence Act, 1903; and

(2) It extends to the whole of British India, including British Baluchistan, the Sonthal Parganas and the Pargana of Spiti.

2. In this Act, unless there is something repugnant in the subject or context,—

(a) the expression "land" includes benefits to arise out of land, and things attached to the earth or permanently fastened to anything attached to the earth:

(b) the expression "person interested" includes all persons claiming an interest in compensation to be made on account of the imposition of restrictions upon the use and enjoyment of land under this Act; and a person shall be deemed to be interested in land if he is interested in an easement affecting the land:

(c) the expression "Command" means one of the principal portions into which the Army of India is, for the time being, divided:

(d) the expression "General Officer of the Command" means the General Officer Commanding the Force in a Command:

(e) the expression "Commanding Officer" means the officer for the time being in command of a work of defence:

(f) the expression "Collector" includes any officer specially appointed by the Local Government to perform the functions of a Collector under this Act:

(g) the expression "Court" means a principal Civil Court of original jurisdiction, unless the Local Government has appointed (as it is hereby empowered to do) special judicial officer within any specified local limits to perform the functions of the Court under this Act:

(h) "maintain", with its grammatical variations and cognate expressions does not when used in relation to a house or other construction, include the doing of any act necessary for keeping such house or construction, until the making of the award referred to in section 12 or until the exercise, prior to the making of the award, of the powers of demolition conferred, in case of emergency, by section 6, sub-sections (1) and (2), in the state in which it was at the time of the publication of the notice referred to in section 3, subsection (2):

(i) the following persons shall be deemed "entitled to act" as and to the extent hereinafter provided, that is to say,—

trustees for other persons beneficially interested shall be deemed the persons entitled to act with reference to any case, and that to the same extent as the persons beneficially interested could have acted if free from disability:;

a married woman, in case to which the English law is applicable, shall be deemed the person so entitled to act, and, whether of full age or not, to the same extent as if she were unmarried and of full age: and

the guardians of minors and the committees or managers of lunatics or idiots shall be deemed respectively the persons so entitled to act, to the same extent as the minors, lunatics or idiots themselves, if free from disability, could have acted:

Provided that—

(i) no person shall be deemed "entitled to act" whose interest in the subject-matter is shown to the satisfaction of the Collector or Court to be adverse to the interest of the person interested for whom he would otherwise be entitled to act;

(ii) in every case the person interested may appear by a next friend or, in default of his appearance by a next friend, the Collector or Court, as the case may be, shall appoint a guardian for the case to act on his behalf in the conduct thereof;

(iii) the provisions of Chapter XXXI of the Code of Civil Procedure shall, *mutatis mutandis*, apply in the case of persons interested appearing before a Collector or Court by a next friend, or by a guardian for the case, in proceedings under this Act; and

(iv) no person "entitled to act" shall be competent to receive the compensation-money payable to the person for whom he is entitled to act, unless he would have been competent to alienate the land upon the use and enjoyment of which restrictions are to be imposed and receive and give a good discharge for the purchase-money on a voluntary sale.

PART II.

IMPOSITION OF RESTRICTIONS.

3. (1) Whenever it appears to the Local Government that it is necessary to impose restrictions upon the use and enjoyment of land in the vicinity of any work of defence or of any site intended to be used or to be acquired for any such works, in order that such land may be kept free from buildings and other obstructions, a declaration shall be made to that effect under the signature of a Secretary to such Government or of some officer duly authorized to certify its orders.

(2) The said declaration shall be published in the local official Gazette and shall state the district or other territorial division in which the land is situated and the place where a sketch plan of the land, which shall be prepared on a scale not smaller than six inches to the mile and shall distinguish the boundaries referred to in section 7, may be inspected: and the Collector shall cause public notice of the substance of the said declaration to be given at convenient places in the locality.

(3) The said declaration shall be conclusive proof that it is necessary to keep the land free from buildings and other obstructions.

4. It shall be lawful for such officer as the Local Government may, by general or special order, authorize in this behalf, and for his servants and workmen, at any time after publication of the notice mentioned in section 3, sub-section (2), to enter upon and survey and take levels of any land in such locality, to dig or bore into the sub-soil, to do all other acts necessary to ascertain whether any and, if so what restrictions should be imposed on the use and enjoyment of the land, to set out the boundaries of the land upon the use and enjoyment of which restrictions are to be imposed, or of any part of such land, to make such levels boundaries and line by placing marks and cutting trenches, and, where otherwise the survey cannot be completed and levels taken and the boundaries and line marked, to cut down and clear away any part of any standing crop, fence or jungle:

Provided that no person shall enter into any building or upon any enclosed court or garden attached to a dwelling-house (unless with the consent of the occupier thereof) without previously giving such occupier at least seven days' notice in writing of his intention to do so.

5. The officer so authorized shall at the time of such entry pay or tender payment for all necessary damage to be done as aforesaid, and, in case of dispute as to the sufficiency of the amount so paid or tendered, he shall at once refer the dispute to the decision of the Collector, or other chief revenue-officer of the district, and such decision shall be final.

6. (1) Whenever a declaration has been made and public notice thereof has been given under section 3, it shall, subject to the provisions of sub-sections (2) to (4), be lawful for such officer as the Local Government may, by general or special order, authorize in this behalf, and for his servants and workmen, to enter and demolish any buildings or other constructions on the surface, to cut down or group up all or any of the trees, to remove or alter all or any of the banks, fences, hedges and ditches, to make underground and other drains, to fill up all excavations, and demolish all buildings and other constructions below the surface, and generally to level and clear the said land and do all such acts for levelling and clearing the same as he may deem necessary or proper, but in such manner nevertheless that evidence of the boundaries of the lands held by different owners may be preserved.

(2) The powers conferred by sub-section (1) shall not be exercised,—

(a) save as otherwise provided by sub-section (3), before the making of the award hereinafter referred to in section 12, nor

(b) save as otherwise provided by sub-section (4), after the expiration of six months from the making of the said award, or any shorter period on the expiration of which the officer exercising such powers gives notice to the Collector that there will be no further exercise of them.

(3) In case of emergency, the Local Government, with the previous sanction of the Governor General in Council, may, by notification in the local official Gazette, declare that all or any powers conferred by sub-section (1) may be exercised at any time within six months after the publication of the notice referred to in section 3, sub-section (2), and such powers may be exercised accordingly and the said notification shall be conclusive proof of emergency.

(4) Nothing in sub-section (2) shall be deemed to preclude any such officer or his servants or workmen from exercising at any time the said powers for the purpose of removing, wholly or in part, any building or other obstruction maintained, created, added to, altered, planted, staked, stored or otherwise accumulated in contravention of this Act or of any rule or order made thereunder or of any condition prescribed in accordance therewith.

7. From and after the publication of the notice mentioned in section 3, sub-

Restrictions: section (2), such of the following restrictions as the Local Government may in its discretion declare therein shall attach with reference to such land, namely :—

(a) Within an outer boundary which, except so far as is otherwise provided in section 39, sub-section (4), may extend to a distance of two thousand yards from the crest of the outer parapet of the work,—

(i) no variation shall be made in the ground level, and no building, wall, bank or other construction above the ground shall be maintained, erected, added to or altered otherwise than with the written approval of the General Officer of the Command, and on such conditions as he may prescribe :

(ii) no wood, earth, stone, brick, gravel, sand or other material shall be stacked, stored or otherwise accumulated :

Provided that, with the written approval of the General Officer Commanding the District and on such conditions as he may prescribe, road-ballast, manure and agricultural produce may be exempted from the prohibition :

Provided, also, that any person having control of the land as owner, lessee or occupier shall be bound forthwith to remove such road-ballast, manure or agricultural produce, without compensation, on the requisition of the Commanding Officer ;

(iii) no surveying operation shall be conducted otherwise than by or under the personal supervision of a public servant duly authorized in this behalf, in the case of land under the control of military authority, by the Commanding Officer and, in other cases, by the Collector with the concurrence of the Commanding Officer ; and

(iv) where any building, wall, bank or other construction above the ground has been permitted under clause (i) of this sub-section to be maintained, erected, added to or altered, repairs shall not, without the written approval of the General Officer of the Command, be made with materials different in kind from those employed in the original building, wall, bank or other construction.

(b) Within a second boundary which may extend to a distance of one thousand yards from the crest of the outer parapet of the work, the restrictions enumerated in clause (a) shall apply with the following additional limitations, namely :—

(i) no building, wall, bank or other construction of permanent materials above the ground shall be maintained or erected.

Provided that, with the written approval of the General Officer of the Command and on such conditions as he may prescribe, huts, fences and other constructions of wood or other materials, easily destroyed or removed, may be maintained, erected, added to or altered :

Provided, also, that any person having control of the land as owner, lessee or occupier shall be bound forthwith to destroy or remove such huts, fences or other

constructions, without compensation, upon an order in writing signed by the General Officer Commanding the District; and

(ii) live hedges, rows or clumps of trees, or orchards shall not be maintained, planted, added to or altered otherwise than with the written approval of the General Officer of the Command and on such conditions as he may prescribe.

(c) Within a third boundary which may extend to a distance of five hundred yards from the crest of the outer parapet of the work, the restrictions enumerated in clauses (a) and (b) shall apply with the following additional limitation namely:—

no building or other construction on the surface, and no excavation, building or other construction below the surface, shall be maintained or erected:

Provided that, with the written approval of the Commanding Officer and on such conditions as he may prescribe, open railings and dry brush-wood fences may be exempted from this prohibition.

8. As soon as may be, after the publication of the declaration aforesaid, the Collector shall cause the land to be marked out and measured, and shall also prepare a register and a detailed plan, which shall be on a scale not smaller than six inches to the mile, showing accurately every building, tree and other obstruction.

Notice to persons interested. 9. (1) At any time before the expiration of—

(a) the period of eighteen months from the publication of the declaration referred to in section 8, or

(b) such other period not exceeding three years from the said publication as the Local Government, with the previous sanction of the Governor General in Council may, by notification in the local official Gazette, direct in this behalf,

the Collector shall cause public notice to be given at convenient places on or near the land, stating the effect of the said declaration and that claims to compensation for all interest in such land affected by anything done or ordered in pursuance of such declaration may be made to him:

Provided that, where anything has been done in exercise of the powers conferred, in case of emergency, by section 6, sub-section (3), the notice prescribed by this section shall be given as soon as may be thereafter.

(2) Such notice shall state the particulars of any damage ordered to be done or, in the case referred to in section 6, sub-section (3), done in exercise of any of the powers conferred by the said section, and the particulars of any restrictions attaching to the land under section 7, and shall require all persons interested in the land to appear personally or by agent before the Collector at a time and place therein mentioned (such time not being earlier than fifteen days after the date of publication of

the notice), and to state the nature of their respective interest in the land and the amount and particulars of their claims to compensation for damage to such interests and their objections (if any) to the measurements made under section 8. The Collector may in any case require such statement to be made in writing and signed by the party or his agent.

(3) The Collector shall also serve notice to the same effect on the occupier (if any) of such land and on all such persons known or believed to be interested therein, or to be entitled to act for persons so interested, as reside or have agents authorized to receive service on their behalf, within the revenue-district in which the land is situate.

(4) In case any person so interested resides elsewhere, and has no such agent, the notice shall be sent to him by post in a letter addressed to him at his last known residence, address, or place of business.

10. The Collector may also require any such person to make or deliver to him, at a time and place mentioned (such time not being earlier than fifteen days after the date of the requisition), a statement containing, so far as may be practicable, the name of every other person possessing any interest in the land or any part thereof as co-proprietor, sub-proprietor, mortgagee, tenant or otherwise, and of the nature of such interest, and of the rents and profits (if any) received or receivable on account thereof for three years next preceding the date of the statement.

Power to require and enforce the making of statements as to names and interests.

11. Every person required to make or deliver a statement under section 9 or section 10 shall be deemed to be legally bound to do so within the meaning of sections 175 and 176 of the Indian Penal Code.

Application of certain sections of the Indian Penal Code.

12. On the day fixed under section 9, or on any other day to which the inquiry has been adjourned, the Collector shall proceed to inquire into the objections (if any) which any person interested has stated pursuant to a notice given under the said section to the measurements made under section 8, and into the decrease in the value of the land, and into the respective interests of the persons claiming the compensation, and shall make an award under his hand of—

Inquiry and award by Collector.

(a) the true area of the land and the nature of the obstructions from which the land is to be kept free;

(b) the compensation which in his opinion should be allowed for any damage caused or to be caused under section 6 and for any restrictions imposed under section 7; and

(c) the appointment of the said compensation among all the persons known or believed to be interested in the land, of whom or of whose claims he has information, whether they have respectively appeared before him or not.

13. (1) Such award shall be filed in the Collector's office and shall, except as hereinafter provided, be final and conclusive evidence, as between the Collector and the persons interested, whether they have respectively appeared before the Collector or not, of the true area of the land, the nature of the said obstructions from which the land is to be kept free, the damage caused or to be caused under section 6, the value of the rights restricted under section 7, and the appointment of the compensation among the persons interested.

(2) The Collector shall give immediate notice of his award to such of the persons interested as are not present personally or by their representatives when the award is made.

14. The Collector may, for any cause he thinks fit, from time to time adjourn the inquiry to a day to be fixed by him.

15. For the purpose of inquiries under this Act the Collector shall have power to summon and enforce the attendance of witnesses, including the parties interested or any of them, and to compel the production of documents, by the same means, and (so far as may be) in the same manner, as is provided in the case of a Civil Procedure.

Matter to be considered and neglected. 16. In determining the amount of compensation, the Collector shall be guided by the provisions contained in section 23 and 24.

17 Whenever the officer exercising powers conferred by section 6 considers it necessary that anything in respect of which any person is or may be entitled to compensation but of which no notice has been given or compensation awarded, under section 9 and 12, respectively, should be done in pursuance of the said powers, the Collector shall cause supplementary notice to be given, as nearly as may be, in the manner prescribed by section 9 and subject to the limit of time imposed by sub-section (1) of that section, and the provisions of sections 10 to 16 shall, as far as they are applicable, be deemed to apply to any further inquiry and award which may be held or made in consequence of such supplementary notice.

PART III.

REFERENCE TO COURT AND PROCEDURE THEREON.

18. (1) Any person interested who has not accepted the award may, by written

Reference to Court. application to the Collector, require that the matter be referred by the Collector, for the determination of the Court, whether his objection be to the measurement of the land, the amount of the compensation, the persons to whom it is payable, or the apportionment of the compensation among the persons interested :

Provided that every such application shall be made,—

(a) if the person making it was present or presented before the Collector at the time when he made his award, within six weeks from the date of the Collector's award ;

(b) in other cases, within six weeks of the receipt of the notice from the Collector under section 13, sub-section (2), or within six months from the date of the Collector's award, whichever period shall first expire,

(2) The application shall state the grounds on which objection to the award is taken.

19. (1) In making the reference the Collector shall state, for the information of the Court, in writing under his hand,—

(a) the situation and extent of the land with particulars of and damage caused under section 6 or of restrictions imposed under section 7 :

(b) the names of the persons whom he has reason to think interested in such land ;

(c) the amount of compensation awarded under section 12 ; and,

(d) if the objection be to the amount of the compensation, the grounds on which the amount of compensation was determined.

(2) To the said statement shall be attached a schedule giving the particulars of the notices served upon, and of the statements in writing made or delivered by, the parties interested respectively.

20. The Court shall thereupon cause a notice specifying the day on which the Court will proceed to determine the objection, and directing their appearance before the Court on the day, to be served on the following persons, namely :—

(a) the applicant ;

(b) all persons interested in the objection, except such (if any) of them as have consented without protest to receive payment of the compensation awarded ; and

(c) if the objection is in regard to the area of the land, the nature of the obstructions or the amount of the compensation, the Collector.

21. The scope of the inquiry in every such proceeding shall be restricted to a

Restriction on scope of proceedings. consideration of the interests of the persons affected by the objection.

22. Every such proceeding shall take place in open Court, and all persons entitled to practise in any Civil Court in the Province shall be entitled to appear, plead and act, as the case may be, in such proceeding.

Proceedings to be in open Court.

23. (1) In determining the amount of compensation to be awarded for damage caused, or to be caused, or for restrictions imposed under this Act, the Court shall take into consideration—

Matters to be considered in determining compensation.

(a) the actual decrease in market-value of the land owing to the publication of the declaration relating thereto under section 3 and any damage caused or to be caused under section 6;

(b) the damage sustained by the person interested, by reason of the removal of any standing crops in the exercise of any power conferred by section 6;

(c) the damage (if any) sustained by the person interested, by reason of ceasing to be able to use such land conjointly with his other land;

(d) the damage (if any) sustained by the person interested by anything done or ordered under sections 6 and 7 injuriously affecting his other property, moveable or immovable, in any other manner, or his earnings; and,

(e) if, in consequence of the imposition of restrictions, the person interested is compelled to change his residence or place of business, the reasonable expenses (if any) incidental to such change.

(8) In addition to the amount representing the actual decrease in the market-value of the land as above provided, the Court shall in every case award a further sum of fifteen per centum on such amount.

24. In determining the amount of compensation to be awarded for damage caused, or to be caused, or for restrictions imposed under this Act, the Court shall not take into consideration—

Matters not to be considered in determining compensation.

(a) the degree of urgency which has led to the damage or the imposition of restrictions;

(b) any disinclination of the person interested to submit to damage or restrictions;

(c) any damage sustained by him, which, if caused by a private person, would not render such person liable to a suit;

(d) any increase to the value of the other land of the person interested, accruing or likely to accrue from anything done under this Act; or

(e) any outlay or improvements on, or disposal of, the land commenced, made or effected without the sanction of the Collector after the date of the publication of the declaration under section 3.

25. (1) When the applicant has made a claim to compensation, pursuant to any Rules as to amount notice given under section 9, the amount awarded to him by the Court shall not exceed the amount so claimed or be less than the amount awarded by the Collector under section 12.

(2) When the applicant has refused to make such claim or has omitted without sufficient reason (to be allowed by the Judge) to make such claim, the amount awarded by the Court shall in no case exceed the amount awarded by the Collector.

(3) When the applicant has omitted for a sufficient reason (to be allowed by the Judge) to make such claim, the amount awarded to him by the Court shall not be less than, and may exceed, the amount awarded by the Collector.

26. Every award under this Part shall be in writing signed by the Judge and shall specify the amount awarded under section 23, sub-section Form of awards. (1), clause (a), and also the amounts (if any) respectively awarded under each of the other clauses of the same sub-section, together with the grounds of awarding each of the said amounts.

27. (1) Every such award shall also state the amount of cost incurred in the proceedings under this Part, and by what persons and in what proportion they are to be paid.

(2) When the award of the Collector is not upheld, the costs shall ordinarily be paid by the Collector, unless the Court is of opinion that the claim of the applicant was so extravagant or that he was so negligent in putting his case before the Collector, that some deduction from his costs should be made or that he should pay a part of the Collector's costs.

28. If the sum which, in the opinion of the Court, the Collector ought to have awarded as compensation is in excess of the sum which the Collector did award as compensation, the Court may direct that the Collector shall pay interest on such excess at the rate of six per centum per annum from the date of his award to the date of payment of such excess into Court.

PART IV.

APPORTIONMENT OF COMPENSATION.

29. Where there are several persons interested, if such persons agree in the apportionment of the compensation, the particulars of such apportionment shall be specified in the award, and as between such persons the award shall be conclusive evidence of the apportionment.

Particulars of apportionment to be specified.

30. When the amount of compensation has been settled under section 12, if any dispute arises as to the apportionment of the same or any part thereof, or as to the persons to whom the same or any part thereof is payable, the Collector may refer such dispute to the decision of the Court.

PART V.

PAYMENT.

31. (1) On making an award under section 12, the Collector shall tender payment of the compensation awarded by him to the persons interested entitled thereto according to the award, and shall pay it to them unless prevented by some one or more of the contingencies mentioned in subsection (8).

(2) If they do not consent to receive it, or if there is no person competent to alienate the land, or if there is any dispute as to the title to receive the compensation or as to the apportionment of it, the Collector shall deposit the amount of the compensation in the Court to which a reference under section 18 would be submitted:

Provided, first, that any person admitted to be interested may receive such payment under protest as to the sufficiency of the amount:

Provided, secondly, that no person who has received the amount otherwise than under protest shall be entitled to make any application under section 18:

Provided, thirdly, that nothing herein contained shall affect the liability of any person, who may receive the whole or any part of any compensation awarded under this Act, to pay the same to the person lawfully entitled thereto.

(3) Notwithstanding anything in this section, the Collector may, with the sanction of the Local Government, instead of awarding a money-compensation in respect of any land, make any arrangement with a person having a limited interest in such land, either by the grant of other lands in exchange, or by the remission of land-revenue on the same or on other lands held under the same title, or in such other way as may be equitable having regard to the interests of the parties concerned.

(4) Nothing in sub-section (3) shall be construed to interfere with or limit the power of the Collector to enter into any arrangement with any person interested in the land and competent to contract in respect thereof.

32. (1) If any money is deposited in Court under section 31, sub-section (2), and it appears that the land in respect of which the same was awarded belonged to any person who had no power to alienate the same, the Court shall order the money to be invested—

(a) in the purchase of other lands to be held under the like title and conditions of ownership as the land in respect of which such money was deposited is held, or,

(b) if such purchase cannot be effected forthwith, then in such Government or other approved securities as it thinks fit;

and shall direct the payment of the interest or other proceeds arising from such investment to the person or persons who would for the time being have been entitled to the possession of the said land, and such moneys shall remain so deposited and invested until the same are applied—

(i) in the purchase of such other lands as aforesaid: or

(ii) in payment to any person or persons becoming absolutely entitled thereto.

(2) In all cases of moneys deposited to which this section applies, the Court shall order the cost of the following matters, including therein all reasonable charges and expenses incident thereto, to be paid by the Collector, namely:—

(a) the cost of such investments as aforesaid;

(b) the costs of the order for the payment of the interest or other proceeds of the securities in which such moneys are for the payment out of Court of the principal of such moneys and the costs of all proceedings relating thereto except such as may be occasioned by litigation between adverse claimants,

33. If any money is deposited in Court under this Act for any cause other than that mentioned in section 32, the Court may, on the application of any party interested or claiming an interest in such money, order the same to be invested in such Government or other approved securities as it thinks fit, and may direct the interest or other proceeds of any such investment to be accumulated and paid in such manner as will, in its opinion, give the parties interested therein the same benefit therefrom as they might have had from the land in respect of which such money was deposited or as near thereto as may be.

34. When the amount of any compensation awarded under this Act is not paid or deposited within fifteen days of making the award, the Collector shall pay the amount awarded with interest thereon at the rate of six per centum per annum from the date of the award until it is so paid or deposited.

PART VI.

MISCELLANEOUS.

35. Service of any notice under this Act shall be made by delivering or tendering a copy thereof signed, in the case of a notice under section 2, sub-section (2), by the officer therein mentioned and, in the case of any other notice, by or by order of the Collector or the Judge.

(2) Whenever it may be practicable, the service of the notice shall be made on the person therein named.

(3) When such person cannot be found, the service may be made on any adult male member of his family residing with him; and, if no such adult male member can

be found, the notice may be served by fixing the copy on the outer door of the house in which the person therein named ordinarily dwells or carries on business, or by fixing a copy thereof in some conspicuous place in the office aforesaid or of the Collector or in the court house and also in some conspicuous part of the land upon which restrictions are to be imposed :

Provided that, if the Collector or Judge so directs, a notice may be sent by post in a letter addressed to the person named therein at his last known residence, address or place of business and service of it may be proved by the production of the addressee's receipt.

Penalties. 36. Whoever wilfully—

(a) obstructs any person in doing any of the acts authorized by section 4, section 6 or section 8, or

(b) destroys, damages, alters or otherwise interferes with the ground level or any work done under section 6, or

(c) contravenes any of the provisions of section 7 or any condition prescribed there-under,

shall be punishable with imprisonment for a term which may extend to one month, or with fine which may extend to fifty rupees, or with both and, in the case of a continuing offence, with an additional fine which may extend to five rupees for every day after the first in regard to which he is convicted of having persisted in the offence; and any expenses incurred in removing the effects of his offence may be recovered from him in the manner provided by the law for the time being in force for the recovery of fines.

37. If the Collector or officer authorized under section 6 is opposed or impeded in doing anything directed or permitted by this Act, he shall
 Magistrate to enforce the terms of the Act. if a Magistrate, enforce compliance, and if not a Magistrate, he shall apply to a Magistrate or (within the towns of Calcutta, Madras, Bombay and Rangoon) to the Commissioner of Police, and such Magistrate or Commissioner (as the case may be) shall enforce compliance.

38. (2) The Local Government shall be at liberty to withdraw from the imposition of any declared restrictions before any of the measures authorized by section 6 have been taken.

Completion of imposition of restrictions not compulsory, but compensation to be awarded when not completed.

(2) Whenever the Local Government withdraws the imposition of any declared restrictions, the Collector shall determine the amount of compensation due for the

damage suffered by the owner in consequence of the notice or of any proceedings thereunder, and shall pay such amount to the person interested, together with all cost reasonably incurred by him in the prosecution of the proceedings under this Act relating to the said restrictions.

(3) The provisions of Part III shall apply, so far as may be, to the determination of the compensation payable under this section.

39. (1) The provisions of this Act shall not be put in force for the purposes of demolishing or acquiring the right to demolish a part only of any house, manufactory or other building, if the owner desires that the whole of such house, manufactory or building shall be demolished or that the right to demolish the whole of it shall be acquired:

Demolition of part of house or building and imposition of restrictions on part of land.

Provided that the owner may at any time before the Collector has made his award under section 12, by notice in writing, withdraw or modify his expressed desire that the whole of such house, manufactory or building shall be demolished, or that the right to demolish the whole of it shall be acquired:

Provided, also, that, if any question shall arise as to whether any building or other construction proposed to be demolished under this Act does or does not form part of a house, manufactory or building within the meaning of this section, the Collector shall refer the determination of such question to the Court and such building or other construction shall not be demolished until after the question has been determined.

In deciding on such a reference the Court shall have regard to the question whether the building or other construction proposed to be demolished is reasonably required for the full and unimpaired use of the house, manufactory or building.

(2) If, in the case of any claim of the kind referred to in section 23, sub-section (1), clause (a), by a person interested, on account of ceasing to be able to use the land upon the use and enjoyment of which restrictions are to be imposed, conjointly with his other land, the Local Government is of opinion that the claim is unreasonable or excessive, it may, at any time before the Collector has made his award, order the imposition of restrictions upon the whole of land of which the land upon the use and enjoyment of which it was first sought to impose restrictions forms a part.

(3) In the case provided for by sub-section (2) no fresh declaration or other proceeding under sections 3 to 10 shall be necessary; but the Collector shall without delay furnish a copy of the order of the Local Government to the person interested, and shall thereafter proceed to make his award under section 12.

(4) Notwithstanding anything contained in section 7, clause (a), any land, upon the use and enjoyment of which restrictions are imposed under this section may be

included in the outer boundary, even though its distance from the crest of the outer parapet of the work exceeds two thousand yards.

40. No award or agreement made under this Act shall be chargeable with stamp-duty, and no person claiming under any such award or agreement shall be liable to pay any fee for a copy of the same.

Exemption from Stamp-duty and fees.

41. No suit or other proceeding shall be commenced or prosecuted against any person for anything done in pursuance of this Act, without giving to such person a month's previous notice in writing of the intended proceeding, and of the cause thereof, nor after tender of sufficient amends.

Notice in case of suits for anything done in pursuance of Act.

42. Save in so far as they may be inconsistent with anything contained in this Act, the provisions of the Code of Civil Procedure shall apply to all proceedings before the Court under this Act.

Code of Civil Procedure to apply to proceedings before Court.

43. Subject to the provisions of the Code of Civil Procedure applicable to appeals from original decrees, an appeal shall lie to the High Court from the award or from any part of the award of the Court in any proceeding under this Act.

Appeals in proceedings before Court.

44. (1) The Governor General in Council and the Local Government, with the previous sanction of the Governor General in Council, may make rules for the guidance of officers in all matters connected with the enforcement of this Act.

Power to make rules.

(2) The power to make rules under sub-section (1) shall be subject to the condition of the rules being made after previous publication.

(3) All rules made under sub-section (1) shall be published in the local official Gazette, and shall thereupon have effect as if enacted in this Act.

ACT No. VIII OF 1903.

An Act to extend to all High Courts the power to grant Probates of Wills and Letters of Administration having effect throughout British India, and to confer upon District Judges the power to grant such probates in certain cases.

WHEREAS it is expedient to extend to all High Courts the power to grant probates of wills and letters of administration having effect throughout British India, and to confer upon District Judges the power to grant such probates in certain cases; It is hereby enacted as follows:—

Short title—

1. This Act may be called the Probate and Administration Act, 1903.

The Indian Succession Act, 1865.

Amendment of sections 187, 242, 242A, 244, 246 and 250, Act X, 1865.

2. In the Indian Succession Act, 1865, the following amendments shall be made, namely:

(1) In the section 187, for the words "within the Province" the words "in British India," and for the words "under the one hundred and eightieth section" the words "with the will, or with a copy of an authenticated copy of the will, annexed," shall respectively be substituted.

(2) To section 242 the following proviso shall be added, namely:

"Provided that probates and letters of administration granted—

(a) by a High Court or

(b) by District Judge, where the deceased at the time of his death had fixed place of abode situate within the jurisdiction of such Judge and such Judge certifies that the value of the property and estate affected beyond the limits of the Province does not exceed ten thousand rupees,

shall, unless otherwise directed by the grant have like effect throughout the whole of British India."

(3) After the said proviso the following section shall be inserted, namely:—

242A. (1) Where probate or letters of administration has or have been granted by a High Court or District Judge with the effect referred to in the proviso to section 242, the High Court or District Judge shall send a certificate thereof to the following Courts, namely:—

(a) when the grant has been made by a High Court, to each of the other High Courts,

(b) when the grant has been made by a District Judge, to the High Court to which such District Judge is subordinate and to each of the other High Courts.

(2) Every certificate referred to in sub-section (1) shall be to the following effect, namely:—

"I, A. B., Registrar [or as the case may be] of the High Court of Judicature at [or as the case may be], hereby certify that on the _____ day of _____ the High Court of Judicature at [or as the case may be] granted probate of the will [or letters of administration of the estate] of C. D., late of _____, deceased, to E. F. of _____ and G. H. of _____"

and that such probate [or letters] has [or have] effect over all the property of the deceased throughout the whole of British India ;

and such certificate shall be filed by the High Court receiving the same.

(3) Where any portion of the assets has been stated by the petitioner, as hereinafter provided in sections 244 and 246, to be situate within the jurisdiction of a District Judge in another Province, the Court required to send the certificate referred to in sub-section (1) shall send a copy thereof to such District Judge, and such copy shall be filed by the District Judge receiving the same."

(4) To sections 244 and 246, respectively, the following paragraph shall be added, namely:—

"Where the application is to the District Judge and any portion of the assets likely to come to the petitioner's hands is situate in another Province, the petition shall further state the amount or such assets in each Province and the District Judge within whose jurisdiction such assets are situate."

(5) After section 246 the following section shall be inserted, viz. :—

"246A. (1) Every person applying to any of the Courts mentioned in the proviso

Addition to statement in petition, etc., probate or letters of administration in certain cases.

to section 244 for probate of a will or letter of administration of an estate intended to have effect throughout British India, shall state in his petition, in addition to the matters respectively required by section 248 and section 246 of this Act, that to the best of his belief no application has been made to any other Court for a probate of the same will or for letters of administration of the same estate, intended to have such effect as last aforesaid,

or, where any such application has been made, the Court to which it was made, the persons by whom it was made and the proceedings (if any) had thereon.

(2) The Court to which any such application is made under the proviso to section 242, may, if it thinks fit, reject the same."

(6) The section 250 the following paragraph shall be added, namely:—

"Where any portion of the assets has been stated by the petitioner to be situate within the jurisdiction of a District Judge in another Province, the District Judge issuing the same shall cause a copy of the citation to be sent to such other District Judge, who shall publish the same in the same manner as if it were a citation issued by himself and shall certify such publication to the District Judge who issued the citation."

(7) After section 277 the following section shall be inserted, namely:—

"277A. In all cases where a grant has been made of probate or letters of administration intended to have effect throughout the whole of British India, the executor, or administrator shall include in the inventory of the effects of the deceased all his moveable or immoveable property situate in British India,

Inventory to include property in any part of British India in certain cases.

and the value of such property situate in each Province shall be separately stated in such inventory, and the probate or letters of administration shall be chargeable with a fee corresponding to the entire amount or value of the property affected thereby wheresoever situate within British India."

The Probate and Administration Act 1881.

Amendment of sections 59, 60, 62, 64, and 69 Act V of 1881.

3. In the Probate and Administration Act, 1881, the following amendments shall be made, namely:—

(1) In section 59, for the proviso the following proviso shall be substituted, namely:—

"Provided that probates and letters of administration granted:—

(a) by a High Court or

(b) by a District Judge, where the deceased at the time of his death had his fixed place of abode situate within the jurisdiction of such Judge and such Judge certifies that the value of the property affected beyond the limits of the Province does not exceed ten thousand rupees,

shall, unless otherwise directed by the grant, have like effect throughout the whole of British India."

(2) For section 60 the following section shall be substituted, namely:—

"60. (1) Where probate or letters of administration has or have been granted by a Court with the effect referred to in the proviso to section 59, the High Court or District Judge shall send a certificate thereof to the following Courts, namely:—

Transmission to High Courts of certificate grants under proviso to section 59.

(a) when the grant has been made by a High Court, to each of the other High Courts,

(b) when the grant has been made by a District Judge, to the High Court to which such District Judge is subordinate and to each of the other High Courts.

(2) Every certificate referred to in sub-section (1) shall be to the following effect, namely:—

"I, A. B., Registrar [or as the case may be] of the High Court of Judicature at [or as the case may be], hereby certify that on the day of the High Court of Judicature at [or as the case may be] granted probate of the will [or letters of administration of the estate] of C. D., late of deceased, to E. F., of , and G. H. and that such probate [or letters] has [or have] effect over all the property of the deceased throughout the whole of British India."

and such certificate shall be filed by the High Court receiving the same.

(3) Where any portion of the assets has been stated by the petitioner, as hereinafter provided in sections 62 and 64, to be situate within the jurisdiction of a District Judge in another Province, the Court required to send the certificate referred to in sub-section (1) shall send a copy thereof to such District Judge, and such copy shall be filed by the District Judge receiving the same."

(3) To sections 62 and 64, respectively, the following paragraph shall be added namely :—

"When the application is to the District Judge and any portion of the assets likely to come to the petitioner's hands is situate in another Province, the petition shall further state the amount of such assets in each Province and the District Judges within whose jurisdiction such assets are situate."

(4) To section 69 the following paragraph shall be added, namely :—

"Where any portion of the assets has been stated by the petitioner to be situate within the jurisdiction of a District Judge in another Province, the District Judge issuing the same shall cause a copy of the citation to be sent to such other District Judge who shall publish the same in the same manner as if it were a citation issued by himself and shall certify such publication to the District Judge who issued the citation."

Repeals.

4. The Probate and Administration Act, 1875, sections 2, 3, 4 and 5, and the Probate and Administration Act, 1877, are hereby repealed.

Repeals.

ACT No. IX OF 1903.

RECEIVED THE ASSENT OF THE GOVERNOR-GENERAL ON THE 20TH MARCH 1903.

An Act to provide for levy of the customs-duty on Indian tea exported from British India, and to amend section 5 of the Indian Tariff Act, 1894.

WHEREAS it is expedient to provide for the creation of a fund to be expended for the promotion of the interests of the tea industry in India by a Committee specially constituted in this behalf;

and whereas for this purpose it is expedient to levy customs duty on tea produced in India and exported from British India, and to amend section 5 of the Indian Tariff Act, 1894;

It is hereby enacted as follows.

Short title and extent.

I. (1) This Act may be called the Indian Tea Cess Act, 1903; and

(2) It extends to the whole of British India except Aden.

Definitions- 2. In this Act,—

(a) "Collector" means, in reference to tea exported by sea, a Customs-collector as defined in clause (c) of section 3 of the Sea Customs Act, 1878; and, in reference to tea passing out of British India by land, the Collector of the district;

(b) "tea cess" means the customs-duty imposed by section 3 of this Act and by section 5 of the Indian Tariff Act, 1894, as amended by this Act, and

(c) "Tea Cess Committee" means the Committee constituted under section 4.

3. On and from the first day of April, 1903, a customs-duty shall be levied and collected on all tea produced in India and exported from any customs-port to any port beyond the limits of British India or to Aden at the rate of a one-quarter of pice per pound, or at such lower rate as the Governor General in Council may, on the recommendation of the Tea Cess Committee, prescribe by notification in the Gazette of India.

Imposition of duty
on exports of Indian
tea.

4. (1) The Governor General in Council shall constitute a Committee to receive and expend the proceeds of the tea cess.

(2) The Committee shall in the first instance consist of twenty members who shall be appointed by the Governor General in Council on the recommendation of the following bodies and authorities, namely:—

(a) three on the recommendation of the Bengal Chamber of Commerce; and one on the recommendation of the Madras Chamber of Commerce,

(b) seven on the recommendation of the Indian Tea Association, Calcutta; and

(c) nine on the recommendation of such respective bodies or authorities interested in the production of tea in India, and established in British India as the Governor General in Council may appoint in this behalf.

Provided that if, within the period prescribed in this behalf by rules made under this Act, any of the said bodies or authorities fails to make any recommendation, or to make the full number of recommendations which it is entitled to make, the Governor General in Council may appoint the required number of members of the Committee of his own motion without such recommendation.

(3) Whenever any member appointed either on the recommendation of any body or authority referred to in sub-section (2), or in default of such recommendation, dies, resigns, ceases to reside in British India or becomes incapable of acting as a member of the Committee, the Governor General in Council may, in his discretion, on the recommendation of such body or authority, or in default of such recommendation, appoint another person to be a member in his stead.

(4) No act done by the Tea Cess Committee shall be questioned on the ground merely of the existence of any vacancy in, or any defect in the constitution of, the Committee.

5. (1) At the close of each month, or as soon thereafter as may be convenient, the Collector shall pay the proceeds of the tea cess after deducting the expenses of collection (if any), to the Tea Cess Committee.

Application of proceeds of tea cess.

(2) The said proceeds and any other moneys received by the Committee in this behalf shall be applied by the Committee towards meeting the cost of such measures as the Committee may consider it advisable to take for promoting the sale and increasing the consumption in India and elsewhere of teas produced in India.

6. (1) The Tea Cess Committee shall keep accounts of all money received and expended under section 5.

Keeping and auditing of accounts.

(2) Such accounts shall be examined and audited annually by auditors appointed in this behalf by the Governor General in Council; and such auditors may disallow any item which has, in their opinion, been expended out of any money so received otherwise than as directed by or under this Act.

(3) If any item is disallowed an appeal shall lie to the Governor General in Council whose decision shall be final.

7. (1) The Governor General in Council, after consulting the Tea Cess Committee and after previous publication, may make rules to carry out the purposes of this Act.

Power to make rules.

(2) In particular and without prejudice to the generality of the foregoing power, such rules may provide for,

(a) the nomination and appointment of members of the Committee, and the procedure of the Committee,

(b) the levy and payment of the cess and

(c) the form of accounts to be kept and the publication of an abstract of such accounts with the report of the auditors thereon.

(3) All such rules shall be published in the Gazette of India.

8. In section 5 of the Indian Tariff Act, 1894, for the words "shall be levied at the rates respectively prescribed in the second, third and fourth schedules on goods passing by land out of, and in the fifth schedule on goods passing by land into" the words "at such rates as may be prescribed by or under this Act or by or under any law for the time being in force relating to customs-duties on imports and exports, respectively,

Amendment of Act VII of 1894, section 5.

into and from ports, shall be levied on goods passing by land out of or into" shall be substituted.

Time during which sections 2 to 7 are to remain in force.

9. Sections 2 to 7 shall remain in force only until the thirty-first day of March, 1908 :

Provided that the Governor General in Council may, on the recommendation of the Tea Cess Committee, declare, by notification in the Gazette of India, that the said sections shall continue in force for any further period specified in such notification.

10. If any proceeds of the tea cess or any moneys so received as aforesaid remain unexpended when section 2 to 7 cease to be in force, they shall vest in His Majesty.

Disposal of surplus proceeds of tea cess.

ACT No. X OF 1903.

RECEIVED THE ASSENT OF THE GOVERNOR GENERAL ON THE 20TH MARCH 1903.

An Act to provide for the erection and management of the Victoria Memorial at Calcutta.

WHEREAS it is intended to erect at Calcutta a building as a Memorial of the Life and Reign of Her late Majesty VICTORIA of the United Kingdom of Great Britain and Ireland, Queen Empress of India, and for this purpose large sums of money have been subscribed by the Princes and People of India;

And whereas at a meeting of Subscribers held in Calcutta certain persons were appointed a Provisional Executive Committee to take the custody of the said moneys;

And whereas it is expedient to make provision for the erection, maintenance and management of the Memorial and for the appointment of a permanent body or Trustees;

It is hereby enacted as follows :—

1. (1) This Act may be called the Victoria Memorial Act, 1903; and

Short title and commencement.

(2) It shall come into force at once.

2. (1) The Trustees of the Victoria Memorial (hereinafter called the Trustees) shall be the following, namely :—

Trustees.

(a) the Governor General of India,

(b) The Lieutenant-Governor of Bengal,

- (c) the Chief Justice of Bengal,
- (d) two persons of high rank nominated by the Governor General to represent the Chiefs and Nobles of India,
- (e) the Secretary to the Government of India in the Foreign Department,
- (f) the President of the Bengal Chamber of Commerce,
- (g) the Chairman of the Corporation of Calcutta, and
- (h) such and so many persons as shall from time to time be nominated by the Trustees with the approval of the Governor General to represent the general body of Subscribers.

(9) The Trustees shall be a body corporate, with perpetual succession by the name of "The Trustees of the Victoria Memorial" and a common seal, and in that name shall sue and be sued, and shall have power to acquire and hold property, to enter into contracts, and to do all acts necessary for and consistent with the purposes of this Act.

(3) All acts done by a majority of those present and voting at a meeting of the Trustees shall be deemed to be acts of the Trustees.

(4) No act of the Trustees shall be deemed to be invalid merely by reason of any vacancy in, or defect in the constitution of, the body of the Trustees.

(5) In the case of *ex officio* Trustees the person for the time being performing the duties of any of the offices mentioned in sub-section (1) shall act as a Trustee.

(6) The Trustees may appoint a person to act as their Secretary.

(7) Orders for the payment of money on behalf of the Trustees shall be deemed to be sufficiently authenticated if signed by two Trustees and countersigned by the Secretary.

3. All sums of money now in the custody of the said Provisional Executive Committee and all other property, whether moveable or immovable, which have been or may hereafter be given, bequeathed or otherwise transferred for the purposes of the said Memorial or acquired for the said purposes by the Trustees shall vest in the Trustees.

4. All officers and servants employed by the Trustees shall be deemed to be public servants within the meaning of the Indian Penal Code.

Provided that this section shall not apply to persons in the service of any contractor employed by the Trustees.

5. (1) The Governor General in Council may make rules to carry out the purpose of this Act.

(2) In particular, and without prejudice to the generality of the foregoing power, such rules may provide—

(a) for the manner in which Trustees, other than *ex officio* Trustees, shall be appointed, and for the periods of time for which such Trustees shall hold office;

(b) for the manner in which meetings of the Trustees shall be convened, the quorum necessary for the transaction of business, and the procedure at such meetings;

(c) for the appointment of Committees of the Trustees, and the powers of expenditure and control, which may be delegated to such Committees;

(d) for the erection, maintenance and management of the Memorial, the care and custody of the objects deposited therein, and the conditions under which the public shall have access thereto;

(e) for the form of accounts to be kept by the Trustees, and for the audit and publication of such accounts; and

(f) for the application to the officers and servants employed by the Trustees of the rules which apply to the civil servants of the Crown, or to any class of such civil servants.

ACT NO. XI OF 1903.

RECEIVED THE ASSENT OF THE GOVERNOR GENERAL ON THE 25TH MARCH 1903.

An Act further to amend the Indian Income-tax Act, 1886.

Whereas it is expedient further to amend the Indian Income-tax Act, 1886; It is hereby enacted as follows:—

Short title and commencement. 1. (1) This Act may be called the Indian Income-tax (Amendment) Act, 1903; and

(2) It shall come into force on the first day of April, 1903.

2. (1) In section 3, sub-section (1), clause (1), of the Indian Income-tax Act, 1886, for the words "five hundred" the words "one thousand" shall be substituted.

(2) In section 41 of the said Act, for the words "forty-one rupees ten annas and eight pies" and "five hundred" the words "eighty-three rupees five annas and four pies" and "one thousand," respectively, shall be substituted.

(3) In the second column of Part III of the Second Schedule to the said Act, for the figures "500," the figures "1,000" shall be substituted.

(4) For sub-head (1) in the second column of Part IV of the said Schedule the following sub-head shall be substituted, namely:—

(a) If the annual income is assessed at—

Not less than Rs. 1,000 but less than Rs. 1,250 the tax shall be Rs. 20

" " 1,250 " " 1,500 " " 25

" " 1,500 " " 1,750 " " 30

" " 1,750 " " 2,000 " " 40

ACT No. XII OF 1903.

RECEIVED THE ASSENT OF THE GOVERNOR GENERAL ON THE 28TH AUGUST, 1903.

An Act further to amend the Indian Tariff Act, 1894.

Whereas it is expedient further to amend the Indian Tariff Act, 1894; It is hereby enacted as follows:—

Short title and commencement.—(1) This Act may be called the Indian Tariff Amendment Act, 1903.

(2) Section 8 shall remain in force until the thirty-first day of March 1904.

Amendment of section 8A.—In section 8A, sub-section (1), of the Indian Tariff Act, 1894, as amended by section 2 of the Indian Tariff Amendment Act, 1899, before the words "the exportation therefrom" the words "the production therein or" shall be inserted.

After section 8B of the Indian Tariff Act, 1894, as amended by section 2 of the Indian Tariff Amendment Act, 1902, the following section shall be added, namely:—

"8C. Notwithstanding that the condition precedent to the imposition of a duty under section 8A may have ceased to exist, and notwithstanding anything in section 1, sub-section (2), of the Indian Tariff (Amendment) Act, 1902, any duties which may have been imposed and are chargeable under section 8A or section 8B on the thirty-first day of August 1903, shall continue to be chargeable in accordance with any rules in force on the said date."

Provided that the Governor General in Council may, by notification in the Gazette of India, reduce the rate at which any such duty is levied, and amend or vary any such rules as aforesaid.

ACT No. XIII OF 1903.

RECEIVED THE ASSENT OF THE GOVERNOR GENERAL ON THE 18TH SEPTEMBER 1903.

An Act further to amend the Lepers Act, 1898.

Whereas it is expedient further to amend the Lepers Act, 1898, by providing for the segregation and medical treatment in British India of lepers belonging to Native States; It is hereby enacted as follows:—

Short title.—1. This Act may be called the Lepers (Amendment) Act, 1903.

Amendment of section 18.—After section 18 of the Lepers Act, 1898 the following section shall be added, namely:—

"19. The Governor General in Council may, by notification in the Gazette of India, direct that any leper or class of lepers, with respect to whom an order for segregation and medical treatment has been made by a Magistrate having jurisdiction within the territories of any Native Prince or State in India, may be sent to any leper-asylum specified in such order; and thereupon the provisions of this Act and of any rules made thereunder shall, with such modifications not affecting the substance as may be reasonable and necessary to adapt them to the subject-matter, apply to any leper sent to a leper-asylum in pursuance of such notification as though he had been sent by the order of a Magistrate having jurisdiction under this Act."

ACT No. XIV OF 1903.

RECEIVED THE ASSENT OF THE GOVERNOR GENERAL ON THE 23RD OCTOBER 1903.

An Act to give effect to the Foreign Marriages Order in Council, 1903.

Whereas it is expedient to give effect to the Foreign Marriages Order in Council, 1903; It is hereby enacted as follows:—

Short title, extent and application. 1. (1) This Act may be called the Indian Foreign Marriage Act, 1903.

(2) It extends to the whole of British India, inclusive of British Baluchistan, the Santhal Parganas, the Shan States and the Pargana of Spiti; and

(3) It applies also to all British subjects and to all servants of the King, whether British subjects or not, in the territories of any Native Prince or State in India.

Notice of marriage intended to be solemnized under 55 and 56 Vict., c. 23. 2. (1) Notice in writing of a marriage which it is intended to solemnize under the Foreign Marriage Act, 1892 may be given by one of the parties intending such marriage, to—

(a) a Marriage Registrar appointed under the Indian Christian Marriage Act, 1872, where either of such parties is a person professing the Christian religion;

(b) a District Magistrate, Chief Presidency Magistrate or Political Agent, where neither of such parties is a person professing the Christian religion:

Provided that the party giving such notice as aforesaid shall have had his usual place of abode for not less than three consecutive weeks immediately preceding the giving of notice within the local limits of the area for which the

Marriage Registrar, Magistrate or Political Agent to whom the notice is given is appointed.

(2) Every notice given under this section shall state—

(a) the name, surname, age and profession or condition of each of the parties intending marriage;

(b) the residence of each of them;

(c) the time during which each of them has dwelt there; and

(d) the place in which the intended marriage is to be solemnized;

and it shall contain a declaration by the party giving the notice to the effect that, he believes that there is no impediment of kindred or affinity or other lawful hindrance to the solemnization of the said intended marriage.

(3) A copy of every notice given under this section shall be published by being affixed in some conspicuous place in the office of the officer to whom the notice is given.

(4) On the expiration of four clear days after such notice as aforesaid has been published in the manner prescribed by sub-section (3); the officer to whom the notice is given, unless he is aware of any impediment of kindred or affinity or other lawful hindrance to the solemnization of the said intended marriage; shall, on payment of such fee (if any) as the Governor General in Council may fix in this behalf, furnish the party by whom the notice was given, with a certificate, under his hand and seal, to the effect that the notice has been so given and published.

ACT No. XV OF 1903.

RECEIVED THE ASSENT OF GOVERNOR GENERAL ON THE 4TH NOVEMBER 1903.

An Act to consolidate and amend the law relating to the Extradition and Rendition of Criminals.

Whereas it is expedient to provide for the more convenient administration in British India of the Extradition Acts, 1870 and 1873, and of the Fugitive Offenders Act, 1881;

and whereas it is also expedient to amend the law relating to the extradition of criminals in cases to which the Extradition Acts, 1870 and 1873 do not apply;

It is hereby enacted as follows:—

CHAPTER I.

PRELIMINARY.

Short title, extent, &c. (1) This Act may be called the Indian Extradition Act, 1903.

(2) It extends to the whole of British India (including British Baluchistan, the Santhal Parganas and the Parganas of Spiti); and

(3) It shall come into force on such day as the Governor General in Council, by notification in the Gazette of India, may direct.

Definitions. 2. In this Act, unless there is anything repugnant in the subject or context,—

(a) "European British subject" means a European British subject as defined by the Code of Criminal Procedure for the time being in force;

(b) "extradition offence" means any such offence as is described in the first schedule:

(c) "Foreign State" means a State to which for the time being, the Extradition Acts, 1870 and 1878, apply;

(d) "High Court" means the High Court as defined by the Code of Criminal Procedure for the time being in force;

(e) "offence" includes any act wheresoever committed which would, if committed in British India, constitute an offence; and

(f) "rules" include prescribed forms.

CHAPTER II.

SURRENDER OF FUGITIVE CRIMINALS IN CASE OF FOREIGN STATES.

3. (1) Where a requisition is made to the Government of India or to any Local Government by the Government of any Foreign State for the surrender of a fugitive criminal of that State, who is in or who is suspected of being in British India, the Government of India or the Local Government, as the case may be, may, if it thinks fit, issue an order to any Magistrate who would have had jurisdiction to inquire into the crime if it had been an offence committed within the local limits of his jurisdiction, directing him to inquire into the case.

(2) The Magistrate so directed shall issue a summons or warrant for the arrest of the fugitive criminal according as the case appears to be one in which a summons or warrant would ordinarily issue.

(3) When such criminal appears or is brought before the Magistrate, the Magistrate shall inquire into the case in the same manner and have the same jurisdiction and powers, as nearly as may be, as if the case were one triable by the Court of Session or High Court, and shall take such evidence as may be produced in support of the requisition and on behalf of the fugitive criminal, including any evidence to show that the crime of which such criminal is accused or alleged to have been convicted is an offence of a political character or is not an extradition crime.

(4) If the Magistrate is of opinion that a *prima facie* case is made out in support of the requisition, he may commit the fugitive criminal to prison to await the orders of the Government of India or the Local Government, as the case may be.

(5) If the Magistrate is of opinion that a *prima facie* case is not made out in support of the requisition, or if the case is one which is bailable under the provisions of the Code of Criminal Procedure for the time being in force, the Magistrate may release the fugitive criminal on bail.

(6) The Magistrate shall report the result of his inquiry to the Government of India, or the Local Government, as the case may be, and shall forward, together with such report, any written statement which the fugitive criminal may desire to submit for the consideration of the Government.

(7) If the Government of India or the Local Government, as the case may be, is of opinion that such report or written statement raises an important question of law, it may make an order referring such question of law to such High Court as may be named in the order, and the fugitive criminal shall not be surrendered until such question has been decided.

(8) If, upon receipt of such report and statement or upon the decision of any such question, the Government of India or the Local Government, as the case may be, is of opinion that the fugitive criminal ought to be surrendered, it may issue a warrant for the custody and removal of such criminal and for his delivery at a place and to a person to be named in the warrant.

(9) It shall be lawful for any person to whom a warrant is directed in pursuance of sub-section (8), to receive, hold in custody and convey the person mentioned in the warrant, to the place named in the warrant, and, if such person escapes out of any custody to which he may be delivered in pursuance of such warrant, he may be re-taken as a person accused of an offence against the law of British India may be re-taken upon an escape.

(10) If such a warrant as is prescribed by sub-section (8) is not issued and executed in the case of any fugitive criminal, who has been committed to prison under sub-section (4) within two months after such committal, the High Court may, upon application made to it on behalf of such fugitive criminal, and upon proof that reasonable notice of the intention to make such application has been given to the Government of India or the Local Government as the case may be, order such criminal to be discharged, unless sufficient cause is shown to the contrary.

4. (1) Where it appears to any Magistrate of the first class or any Magistrate specially empowered by the Local Government in this behalf that a person within the local limits of his jurisdiction is a fugitive criminal of a Foreign State, he may, if he thinks fit, issue a warrant for the arrest of such person, on such information or complaint and on such evidence as would, in his opinion, justify the issue of a warrant if the crime of which he is accused within the local limits of his jurisdiction.

(2) The Magistrate shall forthwith report the issue of a warrant under this section to the Local Government.

(3) A person arrested on a warrant issued under this section shall not be detained more than two months unless within that period the Magistrate receives an order made with reference to such person under section 3 sub-section (1).

(4) In the case of a person arrested or detained under this section the provisions of the Code of Criminal Procedure for the time being in force relating to bail shall apply in the same manner as if such person were accused of committing in British India the crime of which he is accused or has been convicted.

5. (1) If the Government of India or any Local Government is of opinion that the crime of which any fugitive criminal of a Foreign State is accused or alleged to have been convicted is of a political character, it may, if it think fit, refuse to issue any order under section 3, sub-section (1).

Power of Government to refuse to issue order under section 3 when crime of political character.

(2) The Government of India or the Local Government may, at any time stay any proceedings taken under this Chapter and direct any warrant issued under this Chapter to be cancelled and the person for whose arrest such warrant has been issued to be discharged.

Power of Government to discharge any person in custody at any time.

6. The expressions "the Police Magistrate" and "the Secretary of State" in section 3 of the Extradition Act, 1870, shall be read as referring respectively to the Magistrate directed to inquire into a case under section 3 of this Act, and to the Government of India or the Local Government, as the case may be.

References to "Police Magistrate" and "Secretary of State" in section 3 of Extradition Act, 1870.

CHAPTER III.

SURRENDER OF FUGITIVE CRIMINALS IN CASE OF STATES OTHER THAN FOREIGN STATES.

7. (1) Where an extradition offence has been committed or is supposed to have been committed by a person, not being a European British subject, in the territories of any State not being a Foreign State, and such person escapes into or is in British India, and the Political Agent in or for such State issues a warrant addressed to the District Magistrate of any district in which such person is believed to be, for his arrest and delivery at a place and to a person or authority indicated in the warrant, such Magistrate shall act in pursuance of such warrant and may give directions accordingly.

Issuance of warrant by Political Agents in certain cases.

(2) A warrant issued as mentioned in sub-section (1) shall be executed in the manner provided by the law for the time being in force with reference to the execution of warrants, and the accused person, when arrested, shall, unless released in accordance with the provisions of this act, be forwarded to the place and delivered to the person or authority indicated in the warrant.

Execution of such warrant.

(3) The provisions of the Code of Criminal Procedure for the time

Proclamation and attachment in case of persons absconding. being in force in relation to proclamation and attachment in the case of persons absconding shall, with any necessary modifications, apply where any warrant has been received by a District Magistrate under this section as if the warrant had been issued by himself.

8. (1) Where a Political Agent has directed by endorsement on any Release on giving such warrant that the person for whose arrest it is issued security. may be released on executing a bond with sufficient sureties for his attendance before a person or authority indicated in this behalf in the warrant at a specified time and place, the Magistrate to whom the warrant is addressed shall on such security being given release such person from custody.

(2) Where security is taken under this section, the Magistrate shall certify the fact to the Political Agent who issued the bond. Magistrate to retain the fact to the Political Agent who issued the warrant, and shall retain the bond.

(3). If the person bound by any such bond does not appear at the time and place specified, the Magistrate may, on being satisfied as to default. his default, issue a warrant directing that he be re-arrested and handed over to any person authorized by the Political Agent to take him into custody.

(4) In the case of any bond executed under this section, the Magistrate may exercise the powers conferred by the Code of Criminal Procedure for the time being in force in relation to taking a deposit in lieu of the execution of a bond and with respect to the forfeiture of bonds and the discharge of sureties. Deposit in lieu of bond, and forfeiture of bonds.

9. Where a requisition is made to the Government of India or to any Local Government by or on behalf of any State not being a Foreign State, for the surrender of any person accused of having committed an offence in the territories of such State, such requisition shall (except in so far as relates to the taking of evidence to show that the offence is of a political character or is not an extradition crime) be dealt with in accordance with the procedure prescribed by section 3 for requisitions made by the Government of any Foreign State as if it were a requisition made by any such Government under that section: Requisitions by States not being Foreign States.

Provided that, if there is a Political Agent in or for any such State, the requisition shall be made through such Political Agent.

10. (1) If it appears to any Magistrate of the first class or any Magistrate

Power to Magistrates to issue warrants of arrest in certain cases.

empowered by the Local Government in this behalf that a person within the local limits of his jurisdiction is accused or suspected of having committed an offence in any State not being a Foreign State and that such person may lawfully be surrendered to such State, or that a warrant may be issued for his arrest under section 7 the Magistrate may, if he thinks fit, issue a warrant for the arrest of such person on such information or complaint and on such evidence as would, in his opinion, justify the issue of a warrant if the offence had been committed within the local limits of his jurisdiction.

(2) The Magistrate shall forthwith report the issue of a warrant under this section, if the offence appears or is alleged to have been committed in the territories of a State for which there is a Political Agent, to such Political Agent and in other cases to the Local Government.

(3). A person arrested on a warrant issued under this section shall not, without the special sanction of the Local Government, be detained more than two months, unless within such period the Magistrate receives an order made with reference to such person in accordance with the procedure prescribed by section 9, or a warrant for the arrest of such person under section 7.

(4) In the case of a person arrested or detained under this section, the Provisions of the Code of Criminal Procedure for the time being in force relating to bail shall apply in the same manner as if such person were accused of committing in British India the offence with which he is charged.

11. (1) A person accused of an offence committed in British India, not being the offence for which his surrender is asked, or undergoing sentence under any conviction, in British India, shall not be surrendered in compliance with a warrant issued by a Political Agent under section 7 or a requisition made by or on behalf of any State not being a Foreign State under section 9, except on the condition that such person be re-surrendered to the Government of India or the Local Government, as the case may be, on the termination of his trial for the offence for which his surrender has been asked:

Provided that no such condition shall be deemed to prevent or postpone the execution of a sentence of death lawfully passed.

(2) On the surrender of a person undergoing sentence under a conviction in British India, his sentence shall be deemed to be suspended until the date of his re-surrender, when it shall

revive and have effect for the portion thereof which was unexpired at the time of his surrender.

12. The provisions of this Chapter with reference to accused persons shall, with any necessary modifications, apply to the case of a person who, having been convicted of an offence in the territories of any State not being a Foreign State, has escaped into or is in British India before his sentence has expired.

13. Every person who is accused or convicted of abetting or attempting to commit any offence shall be deemed, for the purposes of this Chapter, to be accused or convicted of having committed such offence; and shall be liable to be arrested and surrendered accordingly.

14. It shall be lawful for any person to whom a warrant is directed in pursuance of the provisions of this Chapter, to receive, hold in custody and convey the person mentioned in the warrant, to the place named in the warrant, and, if such person escapes out of any custody to which he may be delivered in pursuance of such warrant, he may be re-taken as a person accused of an offence against the law of British India may be retaken upon an escape.

15. The Government of India or the Local Government may, by order stay any proceedings taken under this Chapter, and may direct any warrant issued under this Chapter to be cancelled, and the person for whose arrest such warrant has been issued to be discharged.

16. The provisions of this Chapter shall apply to an offence or to an extradition offence, as the case may be, committed before the passing of this Act, and to an offence in respect of which a Court of British India has concurrent jurisdiction.

17. (1) In any proceedings under this Chapter, exhibits and depositions (whether received or taken in the presence of the person against whom they are used or not) and copies thereof and official certificates of facts and judicial documents stating facts, may, if duly authenticated, be received as evidence.

(2) Warrants, depositions or statement on oath which purport to have been issued, received or taken by any Court of Justice outside British India, or copies thereof, and certificates of, or judicial documents stating the fact of, conviction before any such Court, shall be deemed duly authenticated,—

(a) If the warrant purports to be signed by a Judge, Magistrate or officer of the State where the same was issued or acting in or for such State;

(b) if the depositions or statements or copies thereof purport to be certified, under the hand of a Judge, Magistrate or officer of the State where the same were taken, or acting in or for such State, to be the original depositions or statements or to be true copies thereof, as the case may require :

(c) if the certificate of, or judicial document stating the fact of, a conviction purports to be certified by a Judge, Magistrate or officer of the State where the conviction took place or acting in or for such State :

(d) if the warrants, depositions, statements, copies, certificates and judicial documents, as the case may be, are authenticated by the oath of some witness or by the official seal of a Minister of the State where the same were respectively issued, taken or given.

(8) For the purposes of this section, "warrant" includes any judicial document authorizing the arrest of any person accused or convicted of an offence.

18. Nothing in this Chapter shall derogate from the provisions of any treaty Chapter not to de- for the extradition of offenders, and the procedure provided rogate from treaties. by any such treaty shall be followed in any case to which it applies, and the provisions of this Act shall be modified accordingly.

CHAPTER IV.

RENDITION OF FUGITIVE OFFENDERS IN HIS MAJESTY'S DOMINIONS.

19. For the purpose of applying and carrying into effect in British India the Application of Fu provisions of the Fugitive Offenders Act, 1881, the follow- gitive Offenders Act, ing provisions are hereby made :— 1881.

(a) the powers conferred on "Governors" of British possessions may be exercised by any Local Government :

(b) the powers conferred on a "Superior Court" may be exercised by any Judge of a High Court :

(c) the powers conferred on a "Magistrate" may be exercised by any Magistrate of the first class or by any Magistrate empowered by the Local Government in that behalf : and

(d) the offences committed in British India to which the Act applies, are piracy, treason and any offence punishable under the Indian Penal Code with rigorous imprisonment for a term of twelve months or more or with any greater punishment :

CHAPTER V.

OFFENCES COMMITTED AT SEA.

20. Where the Government of any State outside India makes a requisition for the surrender of a person accused of an offence committed on board any vessel on the high seas which comes into any port of British India, the Local Government and any Magistrate having jurisdiction in such port and authorized by the Local Government in this behalf may exercise the powers conferred by this Act.

CHAPTER VI.

EXECUTION OF COMMISSIONS ISSUED BY CRIMINAL COURTS
OUTSIDE BRITISH INDIA.

21. The testimony of any witness may be obtained in relation to any criminal matter pending in any Court or tribunal in any country or place outside British India in like manner as it may be obtained in any civil matter under the provisions of the Code of Civil Procedure for the time being in force with respect to commissions, and the provisions of that Code relating thereto shall be construed as if the term "suit" included a criminal proceeding :

Provided that this section shall not apply when the evidence is required for a Court or tribunal in any State outside India other than a British Court and the offence is of a political character.

CHAPTER VII.

SUPPLEMENTAL.

22. (1) The Governor General in Council may make rules to carry out the purposes of this Act.

(2) In particular and without prejudice to the generality of the foregoing power, such rules may be provided for—

(a) the removal of prisoners accused or in custody under this Act, and their control and maintenance until such time as they are handed over to the persons named in the warrant as entitled to receive them.

(b) the seizure and disposition of any property which is the subject of, or required for proof of, any alleged offence to which this Act applies ;

(c) the pursuit and arrest in British India, by officers of the Government or other persons authorized in this behalf, of persons accused of offences committed elsewhere ; and

(d) the procedure and practice to be observed in extradition proceedings.

(3) Rules made under this section shall be published in the Gazette of India and shall thereupon have effect as if enacted by this Act.

23. Notwithstanding anything in the Code of Criminal Procedure, 1898, any person arrested without an order from a Magistrate and without a warrant, in pursuance of the provisions of section 54, clause seventhly, of the said Code, may, under the orders of a Magistrate within the local limits of whose jurisdiction such arrest was made, be detained in the same manner and subject to the same restrictions as a person arrested on a warrant issued by such Magistrate under section 10.

24. The Acts mentioned in the second schedule are repealed to the extent specified in the fourth column thereof.

THE FIRST SCHEDULE.

EXTRADITION OFFENCES.

[See section 2, clause (b,) and Chapter. III (Surrender of Fugitive Criminals in case of States other than Foreign States).]

[The sections referred to are the sections of the Indian Penal Code.]

Frauds upon creditors (section 206).

Resistance to arrest (section 224).

Offences relating to coin and stamps (sections 230 to 263A).

Culpable homicide (sections 299 to 304).

Attempt to murder (section 307).

Thugi (sections 310, 311).

Causing miscarriage, and abandonment of child (sections 312 to 317).

Causing hurt (sections 323 to 333).

Wrongful confinement (sections 347, 348).

Kidnapping and slavery (sections 360 to 378).

Rape and unnatural offences (sections 375 to 377).

Theft, extortion, robbery, etc. (sections 378 to 414).

Cheating (sections 415 to 420).

Fraudulent deeds, etc. (sections 421 to 424).

Mischief (sections 425 to 440).

Lurking house-trespass (sections 443, 446).

Forgery, using forged documents, etc. (sections 463 to 477A).

Desertion from any body of Imperial Service Troops.

Piracy by law of nations.

Sinking or destroying a vessel at sea or attempting or conspiring to do so.

Assault on board a ship on the high seas with intent to destroy life or to do grievous bodily harm.

Revolt or conspiracy to revolt by two or more persons on board a ship on the high seas against the authority of the master.

Any offence against any section of the Indian Penal Code or against any other law which may, from time to time, be specified by the Governor General in Council by notification in the Gazette of India either generally for all States or specially for any one or more States.

THE SECOND SCHEDULE.

ENACTMENTS REPEALED.

(See section 24.)

Year.	No.	Short title.	Extent of repeal.
1879	XXI	The Foreign Jurisdiction and Extradition Act, 1879.	So much as is unrepealed.
1895	IX	The Extradition (India) Act, 1895.	The whole Act.
1896	V	The Foreign Jurisdiction and Extradition Act (1879) Amendment Act, 1896.	The whole Act.

BOMBAY ACT NO. I OF 1903.

(RECEIVED THE ASSENT OF THE GOVERNOR GENERAL ON THE 11TH JUNE 1903.)

An Act further to amend the Bombay Abkari Act, 1878.

WHEREAS it is expedient further to amend the Bombay Abkari Act, 1878, in manner hereinafter appearing; It is hereby enacted as follows:—

Short title. 1. This Act may be cited as the Bombay Abkari (Amendment) Act, 1903.

2. In clause (7) of section 3 of the Bombay Abkari Act, 1878, after the words "spirits of wine" the words "methylated spirits" shall be inserted; and after the word "alcohol" the following shall be added, namely:—

"and

'spirits' means any liquor containing alcohol and obtained by distillation, whether it be denaturalised so as to render it unfit for human consumption or not."

BOMBAY ACT No. II OF 1903.

(RECEIVED THE ASSENT OF THE GOVERNOR GENERAL ON THE 11TH JUNE 1903.)

An Act further to amend the Bombay Boiler Inspection Act 1891.

WHEREAS it is expedient further to amend the Bombay Boiler Inspection Act, 1891, in manner hereinafter appearing; It is hereby enacted as follows:—

1. To section 1, sub-section (3), of the Bombay Boiler Inspection Act, 1891, the following words shall be added, namely:—

"or to any boiler or prime-mover used upon any vehicle or class of vehicles which the Governor in Council may, by notification in the *Bombay Government Gazette*, specify in this behalf."

BOMBAY ACT No. III OF 1903.

(RECEIVED THE ASSENT OF THE GOVERNOR GENERAL ON THE 11TH JUNE 1903.)

An Act further to amend the Bombay District Municipal Act, 1903.

WHEREAS it is expedient further to amend the Bombay District Municipal Act, 1901, in manner hereinafter appearing; It is hereby enacted as follows:—

1. In clause (a) of the second proviso to section 52 of the Bombay District Municipal Act, 1901, hereinafter, called "the said Act," the words "throughout the line of country in which such works are situate, or contiguous to such line of country" are repealed.

Amendment of sections 188 and 189.

2. (1) In section 188, subsection (1), of the said Act—

(a) for clause (a) the following clause shall be substituted, namely:—

"(a) apply or adapt to any notified area the provisions of any section of this Act, or part of any such section or of any rules in force or which can be imposed in any municipal district under the provisions of this Act, subject to such restrictions and modifications, if any, as he may think fit," and

(b) in clause (c), for the word "applied" the words "or rules applied or adapted" shall be substituted.

(2). In section 189 of the said Act, for the word "extended" the word "applied" shall be substituted.

BOMBAY ACT No. IV OF 1903.

RECEIVED THE ASSENT OF THE GOVERNOR GENERAL ON THE 11TH MARCH 1903.

An Act to Provide for the preparation and maintenance of a record of rights in the lands of the Bombay Presidency.

WHEREAS it is expedient to provide for the preparation and maintenance of a record of rights in the lands of the Bombay Presidency in addition to any registers prescribed by or under the Bombay Land-Revenue Code, 1870, and to amend the Code of Civil Procedure and make other provision in relation thereto;

And whereas the previous sanction of His Excellency the Governor General required by section 5 of the Indian Councils Act, 1892, has been obtained for the passing of this Act: It is hereby enacted as follows:—

1. (1) This Act may be called the Bombay Land Record-
Short title. of Rights Act, 1903.

(2) Save as otherwise provided by the proviso to subsection (3), this Act extends to the whole of the Presidency of Bombay except the
Local extent. City of Bombay, Aden and the Scheduled District of the
Mehwasai Chitfai villages as defined in the Scheduled Districts Act, 1874.

Commencement.

(3) It shall come into force at once:

Provided that the provisions of sections 10 to 12 (both inclusive) shall be applied in respect of a village from such date only as the Governor in Council may, by notification published in the *Bombay Government Gazette*, direct that they shall be applied to such village or to the mahal, taluka, or district in which it is included.

Definition.

2. (1) In this Act, unless there is anything repugnant in the subject or context,—

(a) The words "Revenue-officer" "Collector", "Mamlatdar" "Mahalkari" "survey-number", "holder," holding", "superior holder", "tenant", "landlord", "alienated", "village," "mahal," "taluka," and "district" shall be deemed to have the meanings respectively assigned to them by the Bombay Land-Revenue Code, 1879, as from time to time amended :

(b) "Chavdi" means, in any village in which there is no chavdi, such place as the Collector directs shall be deemed to be the chavdi for the purposes of this Act ;

(c) "Suit" means a suit to which the provisions of the Code of Civil Procedure are applicable ;

(d) "High Court" includes the Sadar Court in Sind ; and

(e) "Certified copy" or "certified extract" means a copy or extract, as the case may be certified in the manner prescribed by section 76 of the Indian Evidence Act, 1702.

(2) In Sind the words "*Sind Official Gazette*" and "Mukhtyarkar" shall be deemed to be substituted for the words "*Bombay Government Gazette*" and "Mamlatdar" respectively, wherever they occur in this Act.

Preparation revision and correction of record of rights and register of mutations.

3, (1) Save as otherwise provided by section 17, there shall be prepared as soon as conveniently may be and shall thereafter be kept in every village a record of rights in all lands belonging thereto, which shall include the following particulars, namely:—

(a) the names of persons who are owners, holders, mortgages, landlords or tenants of the land, or assignees of the rent or revenue thereof, in the whole or part of any survey number or other holding in the village,

(b) the nature and extent of the respective interests of such persons and the conditions or liabilities (if any) attaching thereto,

(c) the rent or revenue (if any) payable by or to any of such persons, and

(d) such other particulars as the Governor in Council may from time to time by rules prescribe in this behalf.

(2) The record shall otherwise be in such form and, subject to the provisions of section 6, be compiled in such manner as the Governor in Council may from time to time by rules prescribe in this behalf.

(3) For the purposes of the preparation, correction and maintenance of such record of rights, there shall also be kept a register of mutations and such other registers and records as the Governor in Council may by rules prescribe in this behalf.

(4) The correctness of the entries in the record of rights and register of mutations shall be inquired into, and the particulars thereof, revised by such Revenue-officers and in such manner and to such extent and subject to such appeal as the Governor in Council may from time to time by rules prescribe in this behalf.

4. (1) Subject to any exemption under section 17, any person acquiring, by succession, survivorship, inheritance, partition, purchase, mortgage, gift, lease or otherwise, any right as owner, holder, mortgagee, landlord or tenant of the land, or assignee of the rent or revenue thereof, in the whole or part of any survey number or other holding in any village, in which a record of rights as aforesaid is being prepared or is kept, shall report orally or in writing his acquisition of such right to the village-accountant within three months from the date of such requisition.

Explanation I.—The rights mentioned above include a mortgage without possession, but do not include an easement or a charge not amounting to a mortgage of the kind specified in section 100 of the Transfer of Property Act, 1882.

Explanation II.—A person in whose favour a mortgage is discharged or extinguished, or a lease determines, acquires a right within the meaning of this section.

(2) Where the person acquiring the right is a minor otherwise disqualified, his guardian or other person having charge of his property shall make the report to the village-accountant.

5. (1) The village-accountant shall, on receipt of any report under section 4, whether made within the prescribed period or not,—

(a) at once give a written acknowledgment thereof to the person making the name;

(b) at once post up the report, or a copy or an abstract containing the substance thereof, in a conspicuous place in the village chavdi;

(c) give notice in writing of such report to all persons appearing from the report to have any interest in the subject-matter thereof; and

(d) enter such report in his register of mutations.

Duties of village accountant in respect of reports under section 4.

(2) The village-accountant shall submit a report to the Mamlatdar of the taluka or the Mahalkari of the mahal, in which the village is included, respecting the acquisition of any right of the kind specified in sub-section (1) of section 4, which he has reason to believe to have taken place, and of which a report should have been made to him under that section and has not been so made, and such Mamlatdar or Mahalkari, as the case may be, may, if after due inquiry he finds any such acquisition to have taken place, authorize the making of such entry respecting it as he may deem fit.

(3) Where any objection is made to the correctness of any report under section—
Procedure in cases of acquisition of rights not reported under section 4.
Duties of village-accountant and Circle-Inspector in respect of objections to correctness of report or entry.
 or of any entry respecting the possession or acquisition of any such right as aforesaid in the register of mutations, either before the village accountant, or in the course of an inquiry held under sub-section (4) of section 3 by a Circle-Inspector, such village-accountant or Circle-Inspector shall give a written acknowledgment of the receipt of the objection to the person making the same, and enter the substance of such objection in the register of mutations, or such other register or record as the Governor in Council may direct in this behalf.

Powers and duties of village accountant in respect of entries in a record of rights.
 6. (1) No entry regarding the possession or acquisition of any such right as aforesaid shall be made in a record of rights by a village-accountant, unless—

(a) the making of such entry has been duly authorised, or

(b) the correctness of such entry has, under sub-section (4) of section 3, been inquired into, and the particulars thereof revised, if necessary,

by a Revenue-officer of a rank not below that of a Circle-Inspector or, in the case of a disputed entry or one falling under sub-section (2) of section 5, not below that of a Mahalkari.

(2) The village-accountant shall, for a period of not less than one month before the transfer of any entry from the register of mutations to the record of rights, keep a copy of such entry posted up in a conspicuous place in the village chavdi.

7. (1) Any person whose rights, interests or liabilities are required to be or have been entered in any record or register under this Act shall be bound, on the requisition of any Revenue-officer or village-accountant engaged in compiling or revising the record or register, to furnish or produce for his inspection, within one month from the date of such requisition, all such information or documents needed for the correct compilation or revision thereof as may be within his knowledge or in his possession or power.

Obligation to furnish information as to rights in land.

Provided that no such requisition shall be made by a village-accountant, unless it has been previously countersigned by a Revenue-officer of a rank not below that of a Circle-Inspector.

(2) A Revenue-officer or village-accountant to whom any information is furnished, or before whom any document is produced under sub-section (1) shall at once, if required, give a written acknowledgment thereof to the person furnishing or producing the same, and shall endorse on any such document a note under his signature stating the fact of its production and the date thereof.

8. Any person neglecting to make the report or furnish the information required by section 4 or 7 within the prescribed period shall be liable, at the discretion of the Collector, to be charged a fee not exceeding twenty-five rupees, which shall be leviable as an arrear of land revenue.

Levy of fee from person neglecting to report or furnish information.

9. For the purpose of preparing or revising any map or plan required for, or in connection with any record or register under this Act, any Revenue-officer or village accountant may, subject to such rules as may be from time to time made in this behalf by the Governor in Council, exercise any of the powers of a Survey-officer under sections 96 and 97 of the Bombay Land-Revenue Code.

Power to require assistance from land-holders, etc., in preparation or revision of maps or plans.

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Provided that the power of employing hired labour and assessing the cost thereof under section 97 of the said Code shall not be exercised by a village-accountant or a Revenue-officer of a rank below that of a Mahalkari.

10. (1) Subject to any exemption under section 17, in any suit relating to land situate in a village, to which the provisions of this section have been applied under sub-section (3) of section 1, the plaintiff shall annex to the plaint, or, if for any cause which the Court deems sufficient he fails to do so, shall produce within a reasonable time to be fixed by the Court, a certified copy of any entry or entries in the record of rights regarding the land in respect of which the suit is brought, as well as of any subsequent corrections thereof or additions thereto made in the register of mutations, but not yet entered in the record of rights.

Certified copy of entries in record of rights or register of mutations to be annexed to plaint or produced within reasonable time.

Explanation—A suit relating to land shall, without prejudice to the generality of the expression, be deemed to include a suit relating to the rent or tenancy of land.

Plaint to be rejected under section 54 of the Code of Civil Procedure, if certified copy not annexed to plaint or produced within time allowed.

2. In the case of any such suit the following clause shall be deemed to be added to section 54 of the Code of Civil Procedure as clause (e), namely :—

“(e) in any suit to which section 10 of the Bombay Land Record-of-rights Act, 1903, applies, if the certified copy therein mentioned is not annexed to the plaint and the plaintiff, on being required by the Court to produce it fails to do so within the time allowed by the Court.”

11. (1) In any suit in which a certified copy of any entry or entries in the record of rights or register of mutations is annexed to the plaint or otherwise produced under section 10, the Court shall after the decision thereof communicate to the Collector any error which from the evidence appears to have been made in such entry or entries or which results from the decree passed, and a copy of such communication shall be kept with the record of the suit.

(2) The provisions of sub-section (1) shall apply to an Appellate or Revisional Court as well as to a Court of first instance :

Provided that in the case of an appellate or revisional decree passed by the High Court, the communication shall be made by the Court from which the appeal lay or the record was called for.

(3) The Collector on receipt of such communication shall cause the entry or entries affected to be corrected in accordance with the decree or decision of the Court, so far as it adjudicates upon any right required to be entered in the record of rights or register of mutations.

12. Notwithstanding anything to the contrary in section 87 of the Bombay Land-Revenue Code, 1879, but subject to any exemption under section 17, the Collector shall refuse assistance to any superior holder whose application under section 86 of the said Code relates to lands situate in a village, to which the provisions of this section have been applied under sub-section (3) of section 1, and whose claim to such assistance is not supported by an entry or entries duly made in the record of rights or register of mutations.

13. No entry or entries made in the record of rights or register of mutation shall affect the liability of any person to pay the land-revenue of alienated or unalienated land under the provisions of the Bombay Land-Revenue Code, 1879, or other law for the time being in force relating to the recovery of land-revenue.

14. Subject to such rules and the payment of such fees as the Governor in Council may from time to time prescribe in this behalf, the record of rights and register of mutations shall be open to the inspection of the public at reasonable hours, and certified extracts therefrom, or certified copies thereof, shall be given to all persons applying for the same :

Record of rights and register of mutations open to inspection, and extracts and copies to be given.

Provided that—

(a) applications for such certified extracts or certified copies may be made to, and such certified extracts or certified copies may be given by, either the village accountant, or the Mamltdar of the Taluka, or the Mahalkari of the mahal, in which the village is included, and.

(b) no fee shall be charged for any certified copy required for the purpose specified in subsection (1) of section 19.

Bar of suits against Government and Government officers in respect of entries in record of rights or register of mutations.

15. No suit shall lie against Government or against any officer of Government in respect of a claim to have any entry made in any record or register under this Act, or to have any such entry either omitted or amended.

16. The power to make rules under this Act shall be subject to the condition of the rules being made after previous publication in the manner specified in section 23 of the General Clauses Act, 1897, and every rule made under this Act shall be published in the

Bombay Government Gazette.

17. The Governor in Council may, by notification published in the *Bombay Government Gazette*, from time to time exempt any specified district, taluka, mahal, village or lands, or class of villages or lands, from the operation of this Act or any of the provisions thereof, and may by a like notification cancel or modify any such order of exemption.

BOMBAY ACT No. V OF 1903.

(RECEIVED THE ASSENT OF THE GOVERNOR GENERAL ON THE 11TH JUNE 1903)

An Act to further amend the City of Bombay Municipal Act, 1888.

WHEREAS it is expedient to further amend the City of Bombay Municipal Act, 1888 (as amended by section 1 of Bombay Act II of 1900), in manner hereinafter appearing; It is hereby enacted as follows:—

1. In clause (c) of sub section (2) of section 74 of the City of Bombay Municipal Act, 1888, for the words "fifteen hundred", where they first occur, the words "two thousand" shall be substituted.